Taylor Machine Products, Inc. *and* Woodrow Fay Singleton *and* Paul Edward Marquess *and* James M. Howells *and* Local Lodge 82, District Lodge 60, International Association of Machinists and Aerospace Workers, AFL–CIO–CLC. Cases 7–CA–33135, 7–CA–33187, 7–CA–33451, 7–CA–33483, 7–CA–33583, 7–CA–33809(1), and 7–CA–33809(2)

July 21, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND TRUESDALE

On April 12, 1994, Administrative Law Judge David L. Evans issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and the brief[1] and has decided to affirm the judge's rulings, findings,[2] and conclusions,[3] and to adopt the recommended Order[4] as modified.

We agree with the judge that a bargaining order is warranted. As the judge pointed out, discharging a significant number of likely ''yes'' votes may well be a highly effective means of undermining a union's majority support. Indeed, given the election margin here (31 votes for the Union and 23 against, with 5 challenges), the subsequent unlawful discharge of the six secondary employees was well calculated to change the outcome of a second election. Moreover, the Respondent's willingness to follow up its repeated threats of plant closure with the actual shutdown of the most prounion segment of the plant could only lead other union supporters to reconsider their position.

We also agree with the judge that the Respondent's unfair labor practices will have a residual coercive effect that cannot be dispelled by traditional remedies. The Respondent committed a large number of unfair labor practices, including numerous threats of plant closure and job loss, and numerous coercive interrogations. As noted by the judge, the threats were made by top company officials as well as first-line supervisors, and the Respondent's repeated threats of plant closure are among the most egregious of unfair labor practices, and hardly likely to be forgotten by employees contemplating a second election. Although one of the high-level managers who threatened employees is no longer employed by the Respondent (Plant Manager Pat Cassiopia), even higher ranking officials who also made unlawful threats (President David Sanders and Owner Charles Jones) remain. Moreover, the Respondent's unlawful transfer of the secondary department to Kentucky and discharge of six of its employees in order to ''take care of'' those who were ''the biggest part of the [union] problem'' is the sort of drastic measure certain to live on in the lore of the shop and to exert a substantial coercive effect on any employee—current or subsequently hired—considering voting for the Union in a new election; it is not likely to be erased merely by restoration of the status quo ante. Under these circumstances, we agree with the judge that a fair rerun election is unlikely, and that a bargaining order, on balance, is necessary to protect employee rights.

AMENDED CONCLUSIONS OF LAW

1. Insert the following paragraph after paragraph 2(b).

''(c) Relocating its secondary operations because the employees involved in those operations had become or remained members of the Union or given assistance or support to it, or because other employees had engaged in such activities.''

2. Delete paragraph 3.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Taylor Machine Products, Inc., Taylor, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

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[1] In the absence of exceptions, we adopt pro forma the judge's dismissal of certain 8(a)(1) and (3) allegations.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that the Respondent violated Sec. 8(a)(3) by discharging employee James Howells, we do not rely on his statement that Supervisor Ganich first discussed Howells' performance with him on May 2, and that this conversation thus could not have been considered ''recent'' as of June 12, the date of Howells' discharge. The record indicates that this conversation took place on June 2. Nonetheless, this fact does not alter our conclusion that the judge properly found that the discharge violated Sec. 8(a)(3).

[3] The Respondent excepts to the judge's conclusion that it violated Sec. 8(a)(5). As the judge's finding of an 8(a)(5) violation does not materially alter the remedy in this case, we find it unnecessary to pass on this issue. We shall modify the judge's conclusions of law, Order, and notice accordingly. We shall also amend the conclusions of law, the Order, and notice to make specific reference to the Respondent's discriminatory relocation of its secondary operations.

[4] The Respondent excepts to the restoration order recommended by the judge on the ground that it would be unduly burdensome. As the judge noted, the Respondent did not introduce evidence in support of this assertion at the hearing. If the Respondent has evidence that was unavailable at the time of the hearing bearing on the appropriateness of the restoration remedy, it may introduce that evidence during the compliance stage of this proceeding. *Duke University*, 315 NLRB 1291 (1995); *Lear Siegler, Inc.*, 295 NLRB 857 (1989).

1. Substitute the following as paragraph 1(g).

''(g) Relocating segments of its operations because the employees involved in those operations have become or remained members of the Union or given assistance or support to it, or because other employees have engaged in such activities.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten you with plant closure, harsh working conditions, discharge or other discipline, because you have become or remained members of, or because you are in sympathy with, or because you have given assistance or support to, Local Lodge 82, District Lodge 60, International Association of Machinists and Aerospace Workers, AFL–CIO–CLC (the Union).

WE WILL NOT interrogate you about your union membership, activities, or desires, or the union membership, activities, or desires of your fellow employees.

WE WILL NOT permit some employees to harass other employees because those other employees have become or remained members of the Union or because those other employees are in sympathy with the Union or have given aid or support to it.

WE WILL NOT maintain in effect any disciplinary rule that prohibits you from distribution of literature in nonworking areas of our premises. Any such rule in our employee handbook is hereby rescinded, and WE WILL NOT in the future distribute to any employee any document containing such a rule, and WE WILL NOT promulgate any such rule orally.

WE WILL NOT deny an unpaid leave of absence to Bonnie Warren or any other employees because they have become or remained members of the Union or given assistance or support to it, or because other employees have engaged in such activities.

WE WILL NOT discharge you, or lay you off, or otherwise discriminate against you because you have become or remained a member of the Union or given assistance or support to it, or because other employees have engaged in such activities.

WE WILL NOT relocate segments of our operations because you have become or remained a member of the Union or given assistance or support to it, or because other employees have engaged in such activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reestablish our secondary operations in Taylor, Michigan, and WE WILL restore the work formerly performed there by the unit employees including Vernadette Bader, Ruth Cecil, Josephine Mallia, Floria Russell, Rosemary Smith, and Bonnie Warren.

WE WILL offer to James M. Howells, Vernadette Bader, Ruth Cecil, Josephine Mallia, Floria Russell, Rosemary Smith, and Bonnie Warren immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole, with interest, for any loss of earnings or other benefits suffered as a result of the discrimination against them.

WE WILL remove from our files any reference to the unlawful discharges or layoffs of James M. Howells, Vernadette Bader, Ruth Cecil, Josephine Mallia, Floria Russell, Rosemary Smith, and Bonnie Warren, and WE WILL notify them in writing that this has been done and that their discharges or layoffs will not be used against them in any way.

WE WILL, on request, recognize and bargain with the Union as the collective-bargaining representative of our employees in the following bargaining unit:

> All full-time and regular part-time production and maintenance employees employed by us at our facility located at 21300 Eureka Road, Taylor, Michigan; but excluding office clerical employees, professional employees, and guards and supervisors as defined in the Act.

TAYLOR MACHINE PRODUCTS, INC.

DECISION

STATEMENT OF THE CASE

DAVID L. EVANS, Administrative Law Judge. This case under the National Labor Relations Act (the Act) was tried before me in Detroit, Michigan, on eight dates between June 23 and September 16, 1993. On April 9, 1992,[1] the charge under the Act in Case 7–CA–33135 was filed against Taylor Machine Products, Inc. (the Respondent), by Woodrow Fay

[1] All dates are in 1992 unless otherwise indicated.

Singleton, an individual. On April 21, the charge in Case 7–CA–33187 was filed against Respondent by Paul Edward Marquess, an individual. On July 6, the charge in Case 7–CA–33451 was filed against Respondent by James M. Howells, an individual. On July 15, the charge in Case 7–CA–33483 was filed against Respondent by Local Lodge 82, District Lodge 60, International Association of Machinists and Aerospace Workers, AFL–CIO–CLC (the Union). On August 12, the charge in Case 7–CA–33583 was filed against Respondent by the Union. On October 7, the charges in Cases 7–CA–33809(1) and 7–CA–33809(2) were filed against Respondent by the Union. On November 10, on the basis of these charges, the General Counsel of the National Labor Relations Board (the Board) issued on November 10 an ''Original Third Order Consolidating Cases, Consolidated Amended Complaint and Notice of Hearing'' (the complaint). The complaint, as further amended at trial, alleges violations of Section 8(a)(1), (3), and (5) of the Act by the Respondent.

The Respondent duly filed an answer to the complaint admitting jurisdiction of this matter before the Board, admitting the status of certain supervisors within the meaning of Section 2(11) of the Act, and admitting certain other matters, but denying the commission of any unfair labor practices.

On the entire record and my observation of the demeanor of the witnesses, and after considering the briefs that have been filed, I make the following

FINDINGS OF FACT[2]

I. JURISDICTION

Respondent is a corporation that has an office and place of business (its facility) in Taylor, Michigan, where it is engaged in the business of operating a screw-machine products factory. During the year preceding the issuance of the complaint, Respondent, in the course of those business operations, purchased and received at its Michigan facility goods valued in excess of $50,000 directly from suppliers located at points outside the State of Michigan. Therefore, Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. As the Respondent further admits, the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

1. Background and contentions

Respondent produces small brass and steel automotive parts and sells those parts to the ''Big Three'' American auto makers. Ford Motor Company is the largest customer to which Respondent sells parts directly. Respondent also sells the small parts to Ford indirectly by selling to other suppliers of Ford. Respondent's operations are divided into ''core'' and ''secondary'' operations. The core operations perform the cutting and shaping of the automobile parts. The machines that are used for the core production include approximately 50 ''New Britain'' and ''Davenport'' machines. Most of the core production is sold without further processing, but about 40 percent of the core production is further processed by Respondent's secondary operations. The machines that are used for the secondary operations are two ''Matrix'' machines and approximately 10 other machines. Until August 6, both the core and the secondary operations were conducted at Respondent's facility in Taylor, Michigan, a suburb of Detroit that is contiguous with Dearborn, Michigan, the principal situs of Ford. On August 6, Respondent moved the secondary operations from Taylor, Michigan, to Barbourville, Kentucky, an action that caused the permanent layoffs of six of the secondary-operations employees.

The Union began an organizational campaign in the January. On January 27, in Case 7–RC–19761, the Union filed a petition for a Board election and certification as the collective-bargaining representative of the production and maintenance unit employees. On March 25, an election was held pursuant to the petition. The official tally of the ballots cast in the election showed that, of approximately 58 eligible voters, 31 votes were cast for representation by the Union, and 23 votes were cast against such representation. (There were five nondeterminative challenged ballots.) The Respondent timely filed objections to conduct allegedly affecting the results of the election (the objections). On May 28, after a hearing on the objections, a hearing officer of the Board issued a recommendation that the election be overturned on the basis of third-party conduct. On October 15, the Acting Regional Director issued a decision setting aside the election and ordering a new election on the basis of third-party conduct. The rerun election has not been conducted; the representation case has been held in abeyance by the Board pending the results of this case because, in this case, the General Counsel seeks a bargaining order.

The complaint alleges that, since January 26, the Union has been the designated collective-bargaining representative of the unit employees. The complaint, in 29 paragraphs, further alleges a variety of 8(a)(1) violations by Respondent's supervisors. The following individuals are admitted by Respondent to be supervisors within the meaning of Section 2(11) of the Act:

Charles W. Jones	Owner
David Sanders	President
Pat Cassiopia	Plant manager (before March 31)
Ken Riddle	Materials control manager
Kathy Ganich	Quality control supervisor
Charles Bertram	Davenport machines supervisor
Joseph Gratowski	Shipping foreman
Fred Stasser	New Britain machines supervisor
Ronald Perkins	Secondary operations supervisor

The complaint further alleges that Respondent violated Section 8(a)(3) by: (1) the admitted June 12 discharge of Charging Party Howells; (2) the admitted July 6 discharge of Gene Wilson; and (3) the admitted August 6 transfer of all secondary operations machines from Respondent's Michigan facility

[2] Passages of the transcript have been electronically reproduced. Ellipses are used to excise extraneous matter; however, many extraneous usages of ''you know'' are deleted without ellipses. Proper punctuation of transcript quotations is supplied only where necessary to avoid confusion. I have made some minor grammatical corrections in quoted exhibits rather than use ''(sic).''

to Kentucky and the permanent layoffs of six unit employees who had theretofore been assigned to work at those machines; those alleged discriminatees are: Vernadette Bader, Ruth Cecil, Josephine Mallia, Floria Russell, Rosemary Smith, and Bonnie Warren. The complaint further alleges violations of Section 8(a)(5) by Respondent's admitted failure to bargain over the decision to transfer the secondary operations to Kentucky and Respondent's admitted failure to bargain over the decision permanently to lay off the six named employees. As a remedy, the complaint requests, inter alia, that Respondent be required to restore the secondary operations to its Michigan facility; on brief, as he did at the hearing, the General Counsel also requests as a remedy that Respondent be required to bargain with the Union as the designated collective-bargaining representative of the production and maintenance employees.

As well as denying the commission of any unfair labor practices, the Respondent denies the majority status of the Union, any duty to bargain with the Union, and the appropriateness of the requested remedies.

On January 24 and 25, representatives of the Union began the attempt to organize Respondent's unit employees by visiting several employees' homes. On January 26, a Sunday, the union representatives conducted an organizational meeting at a local motel; the meeting was attended by about 40 of Respondent's employees.

2. Alleged conduct of Respondent's supervisors

a. *Alleged conduct in violation of Section 8(a)(1)*

This section of the decision describes some of the alleged conduct of Respondent's supervisors that is the subject of 8(a)(1) allegations of the complaint. Discussions of other conduct that is alleged to have violated Section 8(a)(1) is included in the discussions of 8(a)(3) allegations.

(1) Conduct by Cassiopia

The complaint contains several allegations of conduct by former Plant Manager Pat Cassiopia. Paragraph 8 of the complaint alleges that, in violation of Section 8(a)(1):

> (d) About late January 1992, Respondent, by its agent Pat Cassiopia, coercively interrogated employees concerning their union activities and sympathies and threatened them with plant closure if they selected the Charging Union as their collective bargaining representative.

A pretrial amendment, paragraph 8(w), repeats the interrogation allegation of paragraph 8(d), and another pretrial amendment, paragraph 8(x), repeats the plant closure allegation of paragraph 8(d).[3] Paragraph 8 further alleges:

> (y) About early February 1992, Respondent, by its agent Pat Cassiopia, created an impression among its employees that it was engaging in surveillance of their activities on behalf of the Charging Union.
>
> (z) About early February 1992, Respondent, by its agent Pat Cassiopia, threatened employees with discharge if they continued to support the Charging Union as their collective bargaining representative.

[3] Such duplicative pleading is to be discouraged.

In support of these allegations, the General Counsel called current employees[4] Charles Warren and Elmer Ferrell, and alleged discriminatees Bonnie Warren and Gene Wilson.

Charles Warren testified that on Monday, January 27, he was paged to Cassiopia's office where:

> Pat asked me if I knew anything about the union stuff that had got started in the shop. And I told him, ''Yes, sir,'' that I had two representatives from the IAM come to my house and ask me to sign the petition and I signed it. And that they was definitely trying to get a union in at Taylor Machine Products. . . .
>
> He was very mad and he said that he had talked to Mr. Jones and that Mr. Jones was very upset over this and he was very upset over it because we didn't come to him and talk to him first to see if something could have been worked out. And that somebody was going to get fired over this. . . .
>
> He said that Elmer Ferrell, Ken Cobb and Charles Warren was the ring leaders of this.
>
> And I told him, ''No,'' I wasn't, that I didn't know nothing about it until the two guys come to the house—anything about a drive at that time.

Alleged discriminatee Wilson testified that, also on January 27:

> [Cassiopia] called me into his office and asked me if I knew about the Union coming in. . . .
>
> I told him, no; that I didn't know nothing about it. . . .
>
> He told me that Charley Jones, the owner, would close the doors if the Union would to get in.

Alleged discriminatee Bonnie Warren testified that a few days after the January 26 organizational meeting, Perkins told her to go to Cassiopia's office, and she did so. Warren was asked, and she testified:

> Q. Okay. To the best of your recollection, Ms. Warren, what was said and by whom during this conversation?
>
> A. Pat said to me, says, ''You know they're trying to get a union in here.''
>
> And I said, ''Yes, I've heard.''
>
> And he said, ''This shop is too small for a union.'' And he says, ''Fords and GM's, places like that,'' he said, ''they're big enough for a union, they can afford a union. But Taylor Machine can't. This shop's too small.''
>
> And he also told me to think about how I was going to vote.
>
> Q. Did he say anything about what would happen to the company if the Union got in?
>
> A. Yes.
>
> Q. What did he say in that regard?
>
> A. He said the doors would be closed.

Elmer Ferrell testified that he was in Cassiopia's office a few days after the January 26 organizational meeting and:

[4] This term is used to indicate employees who were employed by Respondent at time of trial.

> Well, Pat asked me if I knew who started the drive to get a union in and who was responsible for it and a few things that I can remember that he specifically said was that didn't I know that Mr. Jones would probably close the place down if we got a union in. He asked me how many people—if I knew how many people had signed the petition for and I said, I told him, approximately two-thirds of the shop, the people in the shop, at that time. . . .
>
> I told him that better than 75% of the people in our shop wanted a union, they wanted to be represented by a union, and as far as I knowed, the most of them had already signed a petition and it was to be filed that day.

Cassiopia was not called by Respondent, and the above-quoted testimony stands unrebutted. I found the testimony by Wilson, Ferrell, and the Warrens to be credible.

(2) Conduct by Gratowski

Paragraph 8 of the complaint alleges that, in violation of Section 8(a)(1):

> (b) About January and February 1992, Respondent by its agent Joseph Gratowski, coercively interrogated employees concerning their union activities and sympathies.

In support of this allegation, the General Counsel called current employee and Charging Party Woodrow Fay Singleton who testified that, during the morning following the Union's January 26 meeting, Shipping Supervisor Gratowski called him into Gratowski's office. Singleton testified:

> I went in and he asked me was I contacted over the week-end. . . .
>
> [A]nd I said yeah. I said I had a couple of men from International Association of Machinists visit my house, and he said, ''Well, how does it look?''
>
> I said, ''Well, they showed me a petition with 30 names or so on the petition to start a union.'' And that was the extent of the conversation.

Gratowski denied any such inquiries to Singleton; however, Singleton, as a current employee, is afforded a presumption of credibility,[5] and I did find Singleton credible as he gave the above-quoted testimony.

Paragraph 8 of the complaint further alleges that, in violation of Section 8(a)(1):

> (g) About February or March 1992, Respondent, by its agent Joseph Gratowski, threatened employees with harsher working conditions by stating that they would not be able to consume food and soft drinks at their work stations if they selected the Charging Union as their collective bargaining representative.
>
> (h) About February or March 1992, Respondent, by its agent Joseph Gratowski, threatened employees that they would be written up for being late if they selected the Charging Union as their collective bargaining representative.

In support of these allegations, the General Counsel called former employee James A. McGowan who testified that in January Gratowski told him: ''Just little things. Like your pop and chips, you couldn't have it at your work area. Or your tardiness. If you started being tardy, they were going to write you up.''

McGowan testified that, at the time, he had pop or chips at his work station; McGowan testified that he continued to consume pop and chips at his machine after Gratowski's remark. McGowan did not relate Gratowski's statement to any conversation about the Union.

McGowan was a former employee who has no apparent reason to lie, and his testimony was credible, as far as it went. However, the testimony did not relate Gratowski's remark to the union activity, and the General Counsel makes no suggestion on brief of how the remarks by Gratowski could have contained a coercive element. I shall recommend dismissal of these allegations.

(3) Conduct by Bertram

Paragraph 8 of the complaint alleges that, in violation of Section 8(a)(1):

> (a) About January and February 1992, Respondent, by its agent Charles Bertram, coercively interrogated employees concerning their union activities and sympathies. . . .
>
> (c) About January 1992, Respondent, by its agent Charles Bertram, threatened employees with loss of employment if they selected a labor organization as their collective bargaining representative. . . .
>
> (e) About January 1992, Respondent, by its agent Charles Bertram, conveyed the impression to employees that it would be futile for them to select the Charging Union as their collective bargaining representative.

In support of these allegations, the the General Counsel called former employee Paul Marquess. Marquess testified that, on January 27, Davenport Machines Supervisor Bertram called him into his office at the plant. There, according to Marquess:

> Charley asked me if the UAW was at my house and I told him no and, well, he wanted to know what's this all about about a union and . . . .
>
> He just [said] he didn't know why anybody wanted a union. He said it wouldn't do anybody any good. A union's not going to get you more money or anything like that. He said a lot of people would lose their jobs and so forth like that.

Marquess testified that, about twice per week, he went into Bertram's office for supplies. Beginning with the above incident, and continuing until he quit in April, Bertram regularly brought up the subject of the Union when Marquess was in Bertram's office. Marquess testified that Bertram's remarks

> were pretty much the same. He wanted to know why I wanted a union in there and then at the beginning he would ask me who was going . . . to these [Union] meetings. . . . They were held like on a Tuesday, I believe, and he was asking me who was going and at the

[5] *Georgia Rug Mill*, 131 NLRB 1304 (1961); *Gold Standard Enterprises*, 234 NLRB 618 at 619 (1978). Unless otherwise indicated, I afford this presumption to all current employees who testified.

> time I wasn't even going, so I didn't—I don't know. He would keep asking. . . .
>
> He'd say Ford Motor Company will pull their work out. Dura, some company called Dura, would pull their work out.

Dura Mechanical Corporation is a customer of Respondent. Marquess further testified that, at least twice during the preelection period:

> Well, [Bertram] would stand in the office. There was a big window in his office [that looked out on the plant floor]. . . . He'd stand in the office and start waving at everybody in there and says all these people, a lot of these people, are going to lose their jobs.

Bertram denied all of this conduct; however, Marquess was a former employee who has no apparent reason to lie, and I found him more credible than Bertram.

(4) Conduct by Perkins

Paragraph 8 of the complaint alleges that, in violation of Section 8(a)(1):

> (n) About March 26, 1992, Respondent, by its agent Ronald Perkins, coercively interrogated employees about their union activities and sympathies.
>
> (o) On an unknown date, Respondent, by its agent Ronald Perkins, threatened employees with loss of employment if they selected the Charging Union as their collective-bargaining representative.
>
> (p) On an unknown date prior to March 25, 1992, Respondent, by its agent Ronald Perkins, threatened employees with harsher working conditions by stating employees would not be allowed to use the bathroom outside of their regularly scheduled breaks if they selected the Charging Union as their collective bargaining representative.

In support of these allegations, the General Counsel called former employee Shirley Tiszai; from January through April, Tiszai was employed as a Matrix machine helper in the secondary operations under Perkins. Before it was moved to Kentucky on August 6, all employees in the secondary operations were women, a fact that relates to much of Tiszai's testimony.

Tiszai testified that in February Perkins approached her and other employees at a time when the machines were stopped. According to Tiszai:

> We were shut down for a minute or two and Ron Perkins come up and he was asking us if we thought the Union was going to get in or not and just talking about the Union basically. . . .
>
> I told him I didn't think the Union was going to get in and that I was going to vote no.

Tiszai further testified that about 2 weeks after this exchange:

> [Perkins] wanted to know who I thought was going to vote in it. You know, vote for the union. Did I think that all the ladies that worked in the same department as I did were going to vote for it. Did I—Basically, the same thing. If the union was going to get in. . . .
>
> I told him, no, I didn't think there was any chance of a union was going to get in. . . .
>
> I told him that I knew for a fact that the Union wasn't going to get in, that everybody was just acting like it.
>
> He would ask me what I was going to vote and, of course, I told him no . . . . I told [Perkins] some of them were and some of them weren't, some of them were just acting like they were because they were friends with the other ladies.

Tiszai further testified that, about 3 weeks before the March 25 election, at a time when she was working at a Matrix machine with Rachael Edwards:

> Ron Perkins was asking Rachael and I if we thought the Union was going to get in and I responded no, Rachael responded no, and, he said, well, if the Union was to get in, that there would be a lot of layoffs and that the ladies, all the ladies, in secondary would not be allowed to take their bathroom breaks, in the morning or in the afternoon they could not go to the bathroom. . . .
>
> We just told him the Union wasn't going to get in, so we weren't really worried about it, we knew the Union was not going to get in.

Respondent called Perkins who denied this testimony by Tiszai.

Tiszai is a former employee who has apparently nothing to gain by false testimony. She was for the Union, but she did not do so much as sign any of its authorization petitions. That is, her bias is unlikely to rise to the level of that which would cause her to commit perjury. Finally, Tiszai possessed a more credible demeanor than Perkins.

The complaint, paragraph 8, further alleges as a violation of Section 8(a)(1):

> (t) About early April 1992, Respondent, by its agent Ronald Perkins, impliedly threatened employees with adverse working conditions if they supported the Charging Union as their collective bargaining representative.

In support of this allegation the General Counsel called alleged discriminatee Ruth Cecil who testified that, at some point after the election, as she was working, she was approached by Perkins and:

> Well, with my machine I have to fill what you call a hopper up on my machine with stock. So I was filling it up and Ron came by and he was doing this bit, come on, come on, come on, hurry, hurry, you know, let's hurry. So I didn't know if he was joking or what, you know. So, anyway, I said I—I had my [Union] badge on. So I said my, my, since we got the Union in, things are getting bad. So he replied or said to me you ain't seen nothing yet.

Perkins denied making such a comment to Cecil, however, I found Cecil credible.

The complaint, paragraph 8, further alleges as a violation of Section 8(a)(1):

> (u) About early May 1992, Respondent, by its agent Ronald Perkins, threatened employees with loss of employment if they continued to support the Charging Union as their bargaining representative.
>
> (v) About early May 1992, Respondent, by its agent Ronald Perkins, threatened employees with plant closure if they continued to support the Charging Union as their collective bargaining representative.

In support of these allegations, the General Counsel called alleged discriminatee Rosemary Smith who testified that in early May she had two exchanges with Perkins. According to Smith:

> The first conversation was I was at my machine and Ron and I talked and we were talking about the Union and I said there's no way Mr. Jones will ever let this union go through, I believe he'll sell everything he's got and get rid of this place before he'll let the Union come in because I said I've known Mr. Jones for 20 some years.

Smith testified that later during the same week, while she was working, she was approached by Perkins and:

> He said, Mary. And I looked up. I said what. He said you're right. And I said right about what. He said you're right about Mr. Jones; he will close the shop and he will get rid of everything he's got in order to keep the Union out.

Perkins denied such exchanges occurred; however, I found Smith more credible than Perkins.

(5) Harassment of the secondary-operations employees

The complaint, paragraph 8, alleges that in violation of Section 8(a)(1):

> (k) In about March, 1992, and continuing until about August 1992, Respondent, by its agents David Sanders, Ken Riddle and Ronald Perkins, disparately enforced its rules regarding ''horseplay'' in order to allow harassment of employees who supported the Charging Union by employees who did not.
>
> (l) In about March 1992, and continuing until about August 1992, Respondent, by the conduct described above in subparagraph (k), failed to provide a safe working environment for employees in retaliation for their selection of the Charging Union as their collective bargaining representative.

These allegations refer to alleged acquiescence by supervision in harassment of several prounion employees by two antiunion employees. The alleged harassment was in two forms: harassment of a group of about eight secondary-operations employees as they ate their lunches in Respondent's lunchroom, and further harassment of two members of that group when they were at their workplaces. The two employees who are accused of harassment are former shipping and receiving employees, brothers Tom and Jack Holicki. The two secondary-operations employees who were allegedly harassed at their machines by the Holickis were Matrix machine operators Betty Ferrell and Bonnie Warren, one of the alleged discriminatees. The secondary-operations employees who were allegedly subjected to harassment by the Holickis in the lunchroom were: Betty Ferrell, Shirley Tiszai, Bonnie Warren, Vernadette Bader, Ruth Cecil, Josephine Mallia, Floria Russell, and Rosemary Smith, the last six of whom were permanently laid off with Respondent's August 6 transfer of the secondary operations to Kentucky.[6]

As noted, the six layoffs are the subject of 8(a)(3) allegations of the complaint; however, the union activities of the secondary-operations employees must be examined at this point because both the harassment and layoff allegations are premised on the propositions that: (1) the secondary-operations employees were sympathetic toward the Union, and (2) Respondent knew it.

(a) *The employees' known union sympathies*

Warren testified that she regularly wore a union button to work during the campaign. She testified that she regularly ate lunch with the following other secondary-operations employees in the lunchroom, all of whom were in favor of representation by the Union and all of whom discussed that fact when they were in the lunchroom: Betty Ferrell, Verna Bader, Flora Russell, and Josephine Mallia. Warren testified that some of these other employees also wore union buttons. Conversely, Warren testified that the Holickis wore pro-Company buttons during the organizational campaign.

Ferrell testified that she wore a union button every workday between the inception of the organizational attempt until her termination on July 6.[7] She testified that she spoke in favor of the Union at lunchbreaks with Cecil, Smith, Russell, and Mallia.

Bader, who worked on various non-Matrix machines in the secondary operations, testified that she spoke in favor of the Union to Ferrell, Smith, Mallia, Russell, and Cecil during lunchbreaks.

Russell, who operated a broaching machine in the secondary operations, testified that she wore a union button once for half a day. She further testified that she regularly ate lunch with Ferrell, Cecil, Mallia, Smith, Bader, and Warren, and she and those women discussed the Union.

Mallia, who operated Pellows and broaching machines in the secondary operations, testified that she regularly talked about the Union with Cecil, Smith, Bader, and Russell at lunchtime.

Smith, who operated a Pellows machine in the secondary operations department, testified she did not wear a union button during the campaign; however, she also testified that during the spring of 1992, she was approached by Perkins while she was working; Perkins allegedly said: ''Rosemary, I don't believe that you turned against the company as good as they've been to you as for the union.''

The phrase ''as for the Union'' makes no sense unless it was an expression of Smith's conclusion that Perkins was referring to the Union, but it was not testimony that Perkins used the word ''Union.'' I so find. Perkins denied making

[6] Tiszai quit, and Ferrell was lawfully discharged, before August 6.

[7] It was Ferrell's husband, Elmer, who initially contacted the Union.

any such comment, but I found Smith credible. I further find that Perkins was, in fact, referring to actual or suspected union activities of Smith; given the overall circumstances, no other conclusion is possible. Elsewhere, I have credited Smith's testimony that Perkins subsequently told Smith that Jones would close the plant if a union were selected by the employees.

Cecil testified that she wore different union buttons to work. Elsewhere, I have credited Cecil's testimony that Perkins told her, at a time when she was wearing a union button, that things would get worse if the Union were selected as the employees' collective-bargaining representative.

I have also credited the testimony of former employee Tiszai that before the election Perkins interrogated her about whether the other secondary-operations employees would vote for the Union.

(b) *Lunchroom harassment*

Respondent's employee lunchroom is on a mezzanine above the factory floor. It has a plate glass window overlooking the production areas. Directly beneath the lunchroom is the quality control department. The area in front of the quality control department was a work area of the Holickis.

Bonnie Warren testified that once during the organizational campaign, as the secondary employees were eating their lunches in the lunchroom:

> And this is Mr. Jack Holicki and Tom Holicki. And then another time in the lunch room they came in and they had a box on their head that said ''union free'' on it in big black letters and, of course, they were joking and hollering when they come in the lunch room, said this is all the company can afford in hats. Well, this was the day after the Union had gave the . . . union supporters hats that night, and they left the lunch room, went back downstairs, they put the box up on a broom, climb up on a table and kept hitting our window with it. Well, then they started throwing parts and hitting the window.
>
> Well, I got sort of upset. So I seen [secondary-operations supervisor] Mr. Perkins walk by and I motioned for him. He came up to the lunch room and I stated to him, Mr. Perkins, I said, I am getting tired, this is our lunch hour, why should we be harassed while we're eating, and he said, well, what's going on, and we told him. He went back downstairs. He went over to Tom. At the time, he told me I will talk to their foreman, which was [materials-control manager] Ken Riddle. He went back down the stairs. A little bit later I saw Ken. Well, all the women, if they could have looked out the window, they would have saw Ken going back through the plant with his arm around Tom and they were laughing.

Betty Ferrell described the lunchroom harassment by testifying:

> One day we were upstairs in the lunch room and Tom and Jack [Holicki] come up there and Jack had a cardboard box on his head. And it said ''Union'' on it. And they said, ''This is what the Union is going to supply us for hard hat.''
>
> They would take the box, go downstairs. The lunch room was up. And they would go back downstairs and they would hold that box on a stick and put it up in front of the window, our lunch room window.
>
> And then a few times after that they would throw parts up at the window. Their section is down below the lunch room and they would throw parts up at the windows.

Bader described the lunchroom harassment by testifying:

> Two brothers, Jack and Tom, would throw parts up at the windows during lunch hour and during break and they came up in the lunch room with boxes on their heads stating vote no union, we're not union, and things like that. Making faces.

Bader testified that she complained to Perkins about the Holickis' use of the boxes and their throwing of metal parts against the glass. Perkins said that he would ''take care of it,'' but the Holickis' throwing of metal parts against the lunchroom window continued, even after the March 25 election.

Russell testified that she was once in the lunchroom when one of the Holickis threw a part at the window, and Mallia testified that she was in the lunchroom when the Holickis threw things against the window.

Tiszai, a first cousin of the Holickis, testified that the Holickis wore antiunion buttons and attempted to dissuade her from being in favor of the Union, even to the point of causing ''a big family feud.'' Tiszai further described conduct by the Holickis at the lunchroom during the campaign. The conduct included standing on the first floor before the quality control department and raising boxes on poles to the level of the window. The boxes had ''Union Free'' and faces drawn on them.

Respondent's witness, quality control department employee Wilford (Gene) Shepherd, testified that ''every once in a while'' he witnessed Jack Holicki throwing metal parts against the window of the lunchroom while the secondary-operations employees were in the lunchroom taking breaks. Shepherd testified that the Holickis did not appear to be attempting to break the glass, but he did tell Holicki that throwing the metal parts against the glass was ''not such a good idea.''

Admitted Supervisor Gratowski also testified that, once, he saw

> Jack Holicki had wrote something on a box and was poking fun at women about it and I don't exactly remember what was written on the box but I told him to stop it. . . .
>
> I don't—I remember he either had it on a stick or he had it on his head. . . .
>
> I told him to knock it off, yeah. I told him it wasn't appropriate.

Gratowski testified that Holicki complied with his orders to stop his conduct and to discard the box.

Respondent introduced a memorandum to Jack Holicki's personnel file; it is dated April 8, or about 2 weeks after the election; signed by Gratowski, it recites:

> Ron Perkins told me the ladies said they were being harassed by Jack about the Union in the lunchroom. I spoke to Jack and he said he had harassed the ladies by wearing a hat made from a box that said ''it's union time'' with a frowning face drawn on it. I told Jack he was not to harass the women any more and he agreed to keep his views to himself.

Again, the reference to ''the ladies'' is a reflection of the fact that all of the secondary-operations employees were women (when the secondary operations were in Michigan). At the hearing, there was no reference to any core-operations employee who was a woman.

(c) *Work-area harassment*

Warren and Ferrell were Matrix machine operators. Matrix machines are used to apply Locktite, a liquid sealant, on certain small automotive parts that have been produced by the Respondent's core operations. The Matrix machine operators were required to turn valves to release the Locktite, in correct proportions, on to the threads of those automotive parts as they pass through the Matrix machines. This job necessarily requires a certain level of concentration.

As shipping and receiving employees, the Holickis' drove power equipment, called ''High-Lows,'' to the areas of the Matrix machines. There they would pick up wooden pallets which held metal bins that were filled with completed parts; then they would take the completed parts to shipping; then they would bring back the emptied pallets to the Matrix machine area for refilling.

According to Warren, after the organizational activity began, the Holickis began dropping the empty pallets loudly near the Matrix machine operators as they were concentrating on their machine operations, thus surprising, and frightening, the Matrix machine operators and loaders. Warren testified that she and the other Matrix machine operators continually complained to Perkins about this conduct by the Holickis; however, Perkins would either ignore the complaints or do no more than say that he would check into it. The harassment continued, according to Warren.

Ferrell testified that the Holickis ''dropped skids behind us'' and that Tom Holicki was once driving a High-Low when it hit the table upon which she was working, frightening her. Ferrell complained to Perkins; Perkins called Holicki over and said something; then Perkins and Holicki laughed, and Holicki drove off on the High-Low. On other occasions of such conduct by the Holickis, Ferrell would complain to Riddle; then Riddle, in Ferrell's sight but out of her hearing, would address the Holickis, and then he and the Holickis would begin laughing. Ferrell further testified that the Holicki brothers would blow the horn of the High-Low loudly and continually when he passed her workstation.

Charles Warren, husband of alleged discriminatee Bonnie Warren, testified that he worked on machines next to the Matrix machines in the plant. During the campaign, he witnessed various conduct by the Holicki brothers toward the Matrix machine operators:

> And Tom and Jack Holicki was up there all the time dropping skids on the floor when the women had their backs to them, scaring them, hollering, carrying on all the time, bumping the equipment around them and just continuously all the time.

Warren testified that he was present once when Betty Ferrell complained to Perkins about the Holickis dropping pallets loudly around the Matrix machines. Perkins said that he would check into it; Perkins took the Holickis into Riddle's office; a few minutes later Perkins and the Holickis exited Riddle's office, laughing. Warren testified that the Holickis continued with their harassment tactics thereafter, with apparent impunity.

Elmer Ferrell, husband of Betty, described the Holickis' equipment-handling techniques during the campaign:

> Well, at the one time I seen Jack Holicki hold a pallet about, well, it was chest high and drop it behind my wife and Bonnie Warren—were working, sort of their backs to him. Several times I seen the Holicki boys come through a door which would [be] nearby [to the Matrix machines] and continuously blowing the horn on the forklift until they got past them.

Tiszai, the cousin of the Holickis, testified that before the election:

> Tom Holicki was driving the High-Low. He worked in the shipping. He come and took our boxes and stuff and, when he would come over towards us, he would make it real close to us where it would scare us. You know, he would drop it with the High-Low real hard where it would make us jump and scare us and, when he would take our bins away, he would drop them real hard to where he was trying to scare us then. It was basically to Betty Ferrell that he was harassing.

During the organizational attempt, Connie Sue Wilson, wife of alleged discriminatee Gene Wilson, was employed on a part-time basis. One of her duties was sorting parts in the plant office area. Wilson testified that once during the campaign she was present in the plant office with Perkins and another female employee whom she could not identify by name. According to Wilson:

> Mr. Perkins told the lady to harass Bonnie [Warren] and Betty [Ferrell], that, if they couldn't do—running—you know, like she [the woman to whom Perkins was then speaking] was running the machine, that's what she—that's what he had her doing, that, if she could not—if they [Warren and Ferrell] could not keep up with her, then for her to go back and tell Ron Perkins. So Ron Perkins can come and get a hold of them and yell at them and, if they didn't like it, then he'll fire them.

On cross-examination, Tiszai reaffirmed that Perkins used the word ''harass'' in giving his instruction to the unidentified woman employee.

Perkins denied giving any such instructions to any employees; Respondent called an employee, Valencia Calandra, who *might* have been the unidentified person, and she denied having received the alleged instruction to harass Warren and Ferrell.

Perkins further denied, or stated that he could not remember, having received complaints from any employee about the alleged harassment of the secondary-operations employees by the Holickis.

Respondent offered much testimony about how noise could legitimately be made as the High-Lows worked around the Matrix machine operators, how horns of the High-Lows could legitimately be honked, and how tables could accidentally be struck in the operations of the High-Lows.

(d) *Credibility resolutions*

There are no credibility resolutions to be made about the alleged lunchroom tactics of the Holickis; Respondent's witnesses admitted it, as quoted above. I find that the known antiunion Holickis taunted the prounion secondary-operations employees in the lunchroom by displaying the boxes and throwing small metal parts against the window as the secondary-operations employees were taking breaks in the lunchroom. I discredit Perkins' testimony that he could not remember complaints about the Holickis. I further find that Respondent's supervisors knew about this conduct and that, except for the one occasion that Gratowski told Jack Holicki to stop it, they did nothing about the harassment until issuance of Gratowski's April 8 verbal warning to Jack Holicki, the memorandum of which is quoted above.

In making factual conclusions about work-area harassment of Ferrell and Warren, I do not rely on the testimony of Wilson for the following reasons: Working at the Matrix machines were operators and loaders. Warren and Ferrell testified that they were the operators, so the person allegedly instructed by Perkins to speed up the machines must have been a loader. Counsel for the General Counsel made no effort to show that the loaders controlled the production flow, and I do not see how they could have, given the various descriptions of the Matrix machine operations in the record. Moreover, the General Counsel does not allege, and Warren and Ferrell did not testify, that the speed of the machines was ever increased artificially. Given these facts, and the fact that the allegation requires Respondent to prove the negative, who was not instructed, I am constrained to discredit the above-quoted testimony by Wilson. Nevertheless, I sustain the essential factual allegations of work-area harassment of Warren and Ferrell.

Although Respondent called witnesses to testify that some noise was sometimes necessary in the operation of the High-Lows, the unrefuted testimony is that the equipment operations performed by the Holickis can be accomplished with or without sudden, extremely loud, noises. Respondent did not call either of the Holickis to testify that they, in fact, caused no more noises than necessary. Under these circumstances I find in accord with the testimony of the General Counsel's witnesses that, during the campaign period, the Holickis repeatedly, intentionally, in the work areas of Warren and Ferrell made unnecessarily loud noises, by dropping pallets with the High-Low and honking the horn excessively.

(6) Conduct by Riddle

Paragraph 8 of the complaint alleges that, in violation of Section 8(a)(1):

> (i) About the third week of February 1992, Respondent by its agent Ken Riddle, disparately enforced Respondent's rules regarding solicitation against employees who supported the Charging Union.

Charging Party Singleton testified that, on a date that he did not specify, he was told by Riddle not to talk about the Union when he was supposed to be working. Singleton replied to Riddle that he did so only when other employees stopped him to ask him questions. Singleton then testified that, at a later date, he complained to Gratowski and Sanders that employee Carolyn Kiracofe spoke ill of the Union to him while he was working. According to Singleton:

> Mr. Sanders said we can't stop you from saying what you want when you want, and he said that he would have a talk with Ms. Kiracofe and let her know that I wasn't interested in her jokes and everything.

General Counsel makes no argument of statutory interference in this instance, and I shall recommend dismissal of the allegation.

(7) Conduct by Stasser

Paragraph 8 of the complaint alleges as a violation of Section 8(a)(1):

> (q) On an unknown date, Respondent, by its agent Fred Stasser, coercively threatened employees with job cutbacks and layoffs if they selected the Charging Union as their collective bargaining representative.

In support of this allegation, the General Counsel called former employee Lezotte. On brief, page 8, counsel for the General Counsel states: ''On an unknown date, Fred Stasser, an admitted supervisor [G.C. Exh. 1(bb)] related to Lezotte that if the union got in there would be job cutbacks and layoffs. [Tr. 597–599.]''

Other than stating that he could not remember what else Stasser may have said, the entirety of Lezotte's testimony in support of the allegation actually is

> I remember Fred coming up to me, Fred Stasser, and he would occasionally sit down and talk to the employees. He would just ask me if I if I was sure how I was voting and that hopefully I'd do the right thing.

Which is to say, the quoted statement by counsel for the General Counsel is false.[8]

There is no evidence in support of this allegation, and I shall recommend that it be dismissed.

(8) Conduct of Jones at campaign meeting

Paragraph 8 of the complaint alleges that, in violation of Section 8(a)(1):

> (j) About March 1992, Respondent, by its agent Charles W. Jones, impliedly threatened that employees

[8] The misrepresentation of the record is further an insult to the forum; did counsel think that the administrative law judge would not read the transcript?

would lose their jobs if they selected the Charging Union as their collective bargaining representative.

(m) About March 24, 1992, Respondent, by its agent Charles W. Jones, threatened employees with loss of jobs and that the plant would close and reopen under another name if they selected the Charging Union as their collective bargaining representative.

(aa) About mid March 1992, Respondent, through its agent Charles W. Jones, threatened employees with unspecified reprisals if they selected the Charging Union as their collective bargaining representative.

These paragraphs of the complaint refer to alleged conduct by Jones at three campaign meetings conducted by Respondent on March 24, the day before the election.[9] The employees were divided into three groups of 18 to 21 each for the three meetings, and an attendance role of the meetings was received in evidence without objection. Plant Owner Jones spoke at each of the three meetings, as did a labor relations consultant for Respondent.

Charles Warren testified that in the meeting that he attended:

> Mr. Jones, to the best of my recollection, said that Taylor Machine Products was too small for a union, that we had tried a union at Taylor Machine Products before and it didn't work before and it wouldn't work now, and that he would do every thing he could to keep a union out of Taylor Machine Products.

Warren testified that a Teamsters local had represented the employees for 3 years in the late 1960s.

Employee Carolyn Kiracofe attended the same meeting that Warren did. She flatly denied that Jones made any such statement. Kiracofe was credible; I was also impressed by the fact that 11 other employees whom the General Counsel called to testify on other matters and who attended the same meeting as Warren were not asked to corroborate Warren on this issue. I credit Kiracofe, and I recommend dismissal of the allegations based on this portion of Warren's testimony.

Former employee Lezotte testified that at the preelection campaign meeting that he attended Jones said that if the Union were successful:

> Some jobs would be . . . lost more or less. That—Because we make—At the time, we were making a part for Ford that was a 100% job and, that, if the Union did get into the shop, that some of that job would be pulled out because Ford's does not believe in having a 100% job in the shop. In one single shop, a union shop. . . . That there probably would be cut-backs. There might be jobs lost. That people might be out of a job.

Nine other employees who were present at the meeting attended by Lezotte, and who testified for the General Counsel on other issues, were not asked to corroborate Lezotte.[10] Conversely, Respondent produced four credible employee witnesses who contradicted Lezotte. I find that the allegations based on this part of Lezotte's testimony have not been proved, and I recommend dismissal of the allegations based on this portion of Lezotte's testimony.

(9) Maintenance of an overly broad no-distribution rule

The complaint, paragraph 10, alleges that in violation of Section 8(a)(1):

> On or about August 1992, by issuance of a revised employee handbook, Respondent promulgated, and since said date has maintained, the following overly broad no-distribution rule:
>
> *No Solicitation Rule*: No solicitation of any kind is permitted in working areas of the plant during working time. In addition, the distribution of any and all literature is prohibited in working and non-working areas.

Respondent's president, David Sanders, admitted that the quoted rule was published in the August 1992 version of the Respondent's employee handbook, and that the rule remained in effect through the time of trial.

b. *Alleged conduct in violation of Section 8(a)(3)*

(1) March and July denials of leave to Warren and Ferrell

(a) *Background*

The complaint, paragraph 9, alleges that, in violation of Section 8(a)(3) and (1) of the Act:

> On or about March 1992, Respondent withdrew benefits from its employees by changing its past policy of granting unpaid leave to employees when their spouse was using earned vacation time.

This allegation involves alleged treatment of two married couples who were known by Respondent to be actively prounion, the Ferrells and the Warrens. The husbands were long-service employees and were entitled to several weeks of paid vacation each year; the wives had less seniority and were entitled little or no paid vacation. The allegation is that: (1) prior to the 1992 organizational attempt Respondent allowed Betty Ferrell and Bonnie Warren to take unpaid leaves of absence when their husbands, Elmer and Charles, took their paid vacations; and (2) in 1992, because of the union or protected concerted activities of the husbands, or the wives, or both, Respondent did not allow the wives to take unpaid leave when the husbands took paid leave.

Bonnie Warren was hired in 1985. Charles Warren testified that, when Bonnie Warren was initially hired, he went to see Respondent's owner, Jones, in Jones' office. The reason for the visit was that Charles Warren was about to take his 1985 vacation and Bonnie Warren was entitled to none at the time. According to Charles Warren:

[9] Another alleged violation of Sec. 8(a)(1) by the conduct of Jones is discussed along with the allegations of concerning the August 6 layoffs, below.

[10] One witness who was called by the General Counsel, and who attended the meeting that Lezotte attended, but who was not asked to corroborate Lezotte's testimony, was alleged discriminatee Wilson.

> And [Jones] said she could have—if she didn't have vacation time coming, she could have a leave of absence to go on vacation whenever I did because he thought it was important that the families go on vacation together.

The Warrens testified that the policy, as stated by Jones, was followed in succeeding years until 1992.

Betty Ferrell was hired in 1988 on a part-time basis. Nine months after she was hired, she became a full-time employee. Betty Ferrell testified that after she became a full-time employee, former Plant Managers Cassiopia and David Marsick told her that she could take a leave of absence any time that her husband did. Elmer Ferrell testified that, at some point after Betty Ferrell was hired, Cassiopia and Marsick told him the same thing.

Neither Cassiopia nor Marsick testified. Jones at first testified that he could not remember discussing with Charles Warren the ability of Bonnie Warren to take a vacation when he did. Jones testified that he did discuss the topic of Betty Ferrell's vacation with Elmer Ferrell. According to Jones:

> To the best of my recollection, [Elmer Ferrell] asked if it would be all right for he and his wife Betty, to take—if she could take vacation—she worked for us also, at the same time that he did.
>
> I answered that in the fashion that if she had time earned for vacation, she wanted to take vacation pay, she was allowed to go with Elmer, if there was—the company and the plant manager and the president, whomever, deemed it okay.
>
> In other words, if she wasn't needed at the plant at that time.

Then Jones was then asked, and he testified:

> Q. All right. And now you mentioned that you possibly had such—had a conversation with Mr. Warren, regarding such a vacation. Would your comments to Mr. Warren have been any different?
>
> A. No. It would have been the same.

This testimony is less than a denial of the testimony by Charles Warren, and I credit Warren. I also discredit Jones' denial of Elmer Ferrell's testimony. If Jones had made the remarks that he attributed to himself, that leave would be granted only ''if she had time earned for vacation,'' no unpaid leaves of absences would have been granted in the years prior to 1992, as Respondent admits they were.

Respondent's employee handbook states: ''Taylor Machine's needs and its customers' requirements will be the determining factor in deciding if personal leaves can be granted.''

The handbook further states that all requests for leaves of absence must be approved by Respondent's president (Sanders).

Respondent's 1991 records indicate that the Warren and the Ferrell wives took leaves of absence at the same time that the husbands took paid vacations. The records for the other years show that the Ferrells' and the Warrens' vacations-leaves were not entirely congruent between the husbands and the wives, but the records are not inconsistent with the couples' testimony that, each year after being hired, until 1992, the Ferrell and Warren wives were allowed to take some unpaid leave when their husbands took paid vacations.

(b) *Alleged denials of leave and evidence in defense*

Bonnie Warren, who operated the more difficult of Respondent's two Matrix machines, testified that during the first week in March, at a time that she had no paid vacation due, she asked Perkins for a leave of absence at the end of the month, a time when Charles Warren was planning to take a paid vacation. Perkins gave Bonnie Warren no answer at the time, but a few days later called her to his office; New Britain Supervisor Bertram was present. According to Warren:

> Ron Perkins told me that I couldn't have the vacation time that Charles had scheduled. And I said, ''Why?'' . . .
>
> [Perkins] said that too many women were taking too much time off and Dave Sanders was putting a stop to it and I couldn't have mine.

Bertram was called to testify by Respondent, but he was not asked about this incident. Perkins flatly denied making the quoted statement, but I found Warren credible; moreover, if Perkins really had not made the statement, or if Bertram really was not present when the matter was discussed, Bertram would have been asked about the matter when he was called by Respondent.

On March 26, Bonnie Warren went to her doctor's office and, as she admitted on cross-examination, asked for a note stating that she needed to be off work from the next day until April 6, the precise dates for which she had requested a leave of absence. The doctor wrote a note to that effect, stating that Warren had been diagnosed with contact dermatitis and that she could return to work on April 6 with no restrictions. Bonnie Warren did not appear for work on March 27; Charles Warren brought the contrivance-created note to Perkins when he reported to work on March 27. Perkins gave the note to Sanders. Sanders contacted the doctor's office. The doctor told Sanders that Bonnie Warren could work if she did not touch the chemical adhesive, Locktite. Sanders then sent Warren the following telegram:

> Taylor machine is in receipt of a revised work restriction allowing you to be at work next week. Please be at work at 7:00 a.m., 30 March 1992, to direct the Matrix trainees. Failure to report will result in disciplinary action.

Bonnie Warren reported to work on March 30; there were three other Matrix machine operators working that day, Rachael Holicki, Valencia Calandra, Betty Ferrell. Warren testified that she and the Matrix machine operators had little to do on March 30 and 31 or April 1. At the end of the day on April 1, Perkins called Warren to his office. Again with Bertram present, Perkins told Warren that she was laid off for the rest of the week.

Perkins testified that he had previously denied employees leave of absences when their requests were ''not of an emergency nature and we needed them at work,'' and that he denied Bonnie Warren's request for a leave of absence for that reason. Perkins testified that Warren was needed for produc-

tion of ''the 658 brass bulb.'' Perkins was asked, and he testified:

> Q. And was there any particular urgency with respect to those parts? Could they have not been made a couple of weeks later after she got back?
>
> A. Can I elaborate on that just a little?
>
> Q. Yes.
>
> A. In that—when we have orders—it hasn't changed even to this day—Ford Motor Company could call us and tell us they want 100,000 bulbs that we may not have on the floor.
>
> And my materials manager [Riddle] would say, I need these parts, and that is how they would get produced. When he told me he needed those parts, I produced those parts, posthaste, as fast, as rapidly as I could get it done.

Calandra was called by Respondent. She testified that on the days that Betty Warren complained of a skin problem, she, Ferrell, and Rachael Edwards were assigned to work at the older Matrix machine. She and Ferrell worked as loaders and Edwards as the operator. At the time, according to Calandra, Edwards had had little experience in operating that machine, and Warren ''was supervising Rachael.'' Calandra further testified that the employees were told by Perkins ''they needed those parts.'' Edwards was not called by Respondent. Riddle testified but not on this issue.

Perkins testified that, although Edwards had operated the older Matrix machine ''for a few weeks,'' Bonnie Warren was needed to be present to ''supervise'' her.

In 1992, Respondent did not refuse a request by Betty Ferrell for a leave of absence. Betty Ferrell did not ask for a leave of absence in 1992. On July 2, at quitting time, Ferrell presented Perkins with a written statement that she was going to take a leave of absence from July 6 through 10. Perkins told Ferrell that he needed time to look into the matter, but Ferrell turned heel and left. Ferrell did not report for work on July 6, the next working day. For that, she was discharged, and the discharge is not alleged as a violation of the Act.

(2) June 12 discharge of Howells

(a) *Alleged interrogation of, and threat to, Howells*

On June 12, or about 2 weeks after the May 28 recommendation by a Board hearing officer that the March 25 election be set aside, Respondent discharged Charging Party James M. Howells. The General Counsel's theory is that Respondent discharged Howells, either because he refused to campaign against the Union in a prospective rerun election, or because Respondent suspected Howells of prounion sympathies (despite his protestations to the contrary), or both. Respondent contends that Howells was discharged for several different reasons, none of which involved any suspected sympathies for the Union by Howells or any reluctance by Howells to campaign against the Union.

Howells was hired by Respondent on April 17 as an auditor (inspector) in the quality control department. He reported directly to Quality Control Department Manager Kathy Ganich; Ganich reported to Sanders. Before being hired by Respondent, Howells had had 2 years' experience in the industry; his prior inspection jobs had ended in layoffs.

The complaint, paragraph 8, alleges that in violation of Section 8(a)(1):

> (r) About mid April-1992, Respondent, by its agent David Sanders, coercively interrogated employees regarding their support for and activities on behalf of the Charging Union.

The General Counsel called Howells in support of this allegation.

On April 15 Howells was interviewed by Ganich and Sanders. Ganich conducted a job-related interview, then, according to Howells, Sanders conducted an interview in which Sanders only wanted to talk about the Union. According to Howells:

> Mr. Sanders [asked if I had] heard about the labor problems they were having at Taylor and I said immediately, no, I had no idea, and he said, well, the union had been voted in, but that they were in the process of getting another election and that I would be eligible to vote in that election, but that he would do everything in his power to keep quality control out of the union and—because I was concerned about that—and he said that, if they did have a union, I would not be in it, but I would be eligible to vote in this new election. . . .
>
> When he told me about the labor problems, I assured him that I would not—that I had no reason to vote for a union and that I would vote against if that were to happen that—you know, a new election—he then asked me if I would work out of my classification in the event of a strike and run machines, which I had experience at . . . and I told him I would.

At the end of the interview, Sanders offered Howells the job, which Howells accepted.

Sanders denied asking Howells the questions that Howells attributes to him, but I found Howells credible on the point.

Howells described his duties as a quality control department auditor:

> I had to do inspections of all machinery that was running, making parts, in a certain department, which was the New Britain machines . . . and make sure that they were making good parts before I went on to the next machine and, if I ever did find anything wrong, I would have to shut that down until it was fixed. . . .
>
> Whenever I found a part that was . . . outside of the specifications on the blueprint for that particular part, I had to let the operator know and put a red tag in the production that was immediately coming off the machine to let anyone know that these were not to be mixed with good parts . . . [and all of the machine's prior production has] to be checked 100% before they can be mixed with good parts.

(This red-tag procedure is also relevant to Wilson's discharge, discussed infra.)

Howells's starting pay was $7.50 per hour; he was hired subject to a 90-day probationary period, as were all other employees. Two weeks after he was hired, Howells told

Ganich that he thought $7.50 per hour was inadequate for someone, such as he, who had 2 years' experience in the industry.

Howells testified that while working he heard other employees in the quality control department make disparaging remarks about prounion employees. Although final inspector Shepherd did sign a union authorization petition, there is no other evidence that any employee in the quality control department otherwise supported the Union. Respondent's witness, final inspector Kiracofe, who was something of a leadperson, acknowledged on cross-examination that she ''bitterly opposed'' the Union's organizational attempt.

According to Howells and Kiracofe, all of the quality control department employees except Howells took their breaks in the quality control department. Howells worked 7 a.m. to 3 p.m.; he did not have the unpaid 30-minute lunchbreak that other employees had, but he did get a paid 20-minute break about noon. During his employment Howells regularly took his noon break in the lunchroom with the secondary-operations employees. Warren and Cecil also testified that alleged discriminatee Howells was present during some of their prounion lunchroom discussions. The General Counsel contends that this practice would have led Respondent to suspect Howells of prounion sympathies.

The complaint, paragraph 8, alleges that in violation of Section 8(a)(1):

> (s) About late April 1992, and May 1992, Respondent, by its agent Kathy Ganich, impliedly threatened employees with plant closure if they continued to support the Charging Union as their collective-bargaining representative.

Howells credibly testified that, after a rerun of the March 25 election had been recommended by a Board hearing officer on May 28, Kiracofe asked him how he felt about the Union; Howells told Kiracofe that he would vote against the Union, but he would not campaign against it.

The next day, according to Howells, some employees in the quality control department created a sign that read ''QC Union Free.'' Howells testified that, on the day that the sign was created, he approached Ganich and asked if the sign was going to be posted. Howells testified:

> So she assured me that . . . the sign, would not be hung up and that made me feel better, but she also brought up that she didn't understand why I would not want to campaign for the Company if I was going to vote that way and had I ever been involved in a campaign like this and I told her no and I let her know where I stood and I didn't understand why she couldn't understand I had to deal with these people [the machine operators] every day, day in/day out, that was my job, dealing with both sides. . . .
>
> She said that it's a very competitive business and that they would have a hard time competing with the other companies that don't have unions, if they have one; that it would be like a 25% increase in the cost of doing business if they had a union. . . .
>
> She said it was possible that they may have to close the plant and move it or change the name or that these things were all possibilities.

Ganich denied this testimony, but I found Howells credible, and I do credit his testimony.

Howells testified that in mid-May, he met Sanders in a hallway and engaged in a conversation in which Sanders told him that Sanders had heard that he had been doing a good job. Sanders did not deny this testimony. Howells further testified that he received no warnings that his work performance was unsatisfactory, although he did allow that Ganich regularly encouraged him to make more rounds of the machines. Howells testified that during his tenure he increased from one to three the number of his inspection rounds per shift.

(b) *Howells' discharge and evidence in defense*

Howells testified that on June 12, Ganich called him to her office and stated that he was discharged, and:

> then she went on to tell me that the reasons were money, that she thought I wasn't happy at Taylor because I asked for more money back when—shortly after I started and that she thought I was—or they thought I was reluctant to tag parts, red tag parts, and that I was not loyal enough to the Company. . . .
>
> I said does this . . . mean something to do with the Union here. You know, the lack of loyalty to the company. And she said no.

Howells testified that Ganich did not explain what she meant by ''loyalty.''

Howells testified that Ganich stated that a further reason for the discharge was that Davenport Machine Supervisor Bertram ''had reported that I was harassing him to hire my brother-in-law.''

Howells testified that during the discharge interview Ganich left the room momentarily. When she did so, Howells looked at a paper that Ganich had left on the desk. Howells described things written on the paper:

> It said, No. 1, money. No. 2, reluctance to red tag or to tag—because there are other color tags, too. And lack of loyalty to the company. That was all I was able to see. Numbered 1 through 3 and I believe there was more.

Howells received his final paycheck on June 19. Along with the paycheck was a document dated June 18 and entitled ''Letter of Reference for James Howells.'' Signed by Ganich, it states:

> While employed at Taylor Machine Products, Inc., James Howells demonstrated that he had mastered the use of the following inspection instruments and equipment.
>
> [Here, Ganich listed 11 categories of instruments used by line inspectors such as Howells.]
>
> James also is familiar with inch to metric conversion and can read blueprints and shop sketches. James could be successful in any job that utilizes the equipment and job skills outlined. In addition, James has the ability to learn new skills quickly.

Howells testified that Ganich's listing included all categories of instruments that he used when working for Respondent.

Howells further testified that he had not asked for any letter of recommendation.

Ganich testified that, before he was discharged, she ''counseled'' Howells twice about his performance. Ganich testified she created an ''audit'' of Howells' work dated June 2. The audit indicates that Howells had missed several inspections and was not making a sufficient number of rounds of the machines per shift. Ganich was asked, and she testified:

> Q. And was this discipline of Mr. Howells at this point?
>
> A. No. I was counseling him really. Making sure that he understood what was required of him.

Ganich testified that, at the same time she showed Howells ''a large number of customer returns in May of '92.'' The parts had passed through production, inspection, and shipment, before Howells was hired; Ganich testified that she brought the matter up to Howells:

> Because I wanted to make sure that corrections had been made to assure that those same types of defects or errors were not going to reach our customer again. It was very important for him to understand.

As evidence of a second counseling, Ganich identified memorandum to Howells' file dated June 8, a Monday. It has printed and cursive portions. The printed portion states:

> Jim missed a 5–10% reject on Part [number] for 2 days, 6-4 and 6-5. Upon questioning Jim, I found that he has not been inspecting machines that have been ''down'' before issuing the green ''OK'' tag at the end of the day. I instructed Jim that a thorough inspection must be performed on parts that have had machine down-time before any green ''OK'' tag can be issued.

Ganich testified that on June 8 she showed the memorandum to Howells (apparently when only the printed portion was on it) and:

> He said that he was rushed and he couldn't get his rounds in and that's when I decided I'd better write it down that I had authorized overtime with me and he was to get with me when he didn't have time. If for some reason, he couldn't make his rounds, because he was a new employee, we always authorize a little extra time for them. We try to make—be as accommodating as possible with a new employee, and, if he wasn't getting the rounds, he was to come to me and I would either make arrangements for someone to do the inspections or authorize overtime and at that point I had chosen to authorize overtime for him because we were short-handed.

Then Ganich added the cursive portion stating: ''Jim has indicated he is rushed and can't get the rounds in. I have instructed Jim to contact me and get extra O.T. if rounds are not completed by end of day.''

Ganich testified to no recurrence of the problems mentioned in the June 8 counseling that occurred before the discharge of Howells on the morning of June 12.

Ganich identified a document that she had dated June 12. It states:

> James Howells was released before his 90 day probationary period for the following reasons:
>
> (1) Recent ''errors'' in inspection & procedures raised questions in his ability to objectively perform his work duties as a QC inspector—was he trying to protect operators at the risk of jeopardizing our quality record with our customers?
>
> (2) James did not appear to be happy at Taylor Machine—complaining about his hourly wage to me within his first week of employment. I do not want to invest time in an employee that is not committed and won't be happy with the work climate.
>
> (3) Ron Perkins complained that James was disrupting work at the Matrix by giving his own ''instructions'' to the operators.
>
> (4) Charlie Bertram was bothered several times by James asking was he going to hire his brothers-in-law.
>
> (5) James did not have a good working relationship with the other employees in the QC department & was considered a ''loner.'' QC requires a team effort at Taylor Machine.

Ganich testified that she went to Sanders on June 12 to discuss concerns that she had with Howells at the time. She was asked on direct examination, and she testified:

> Q. And what were those concerns?
>
> A. Well, this is basic—I summarized it here. [At this point, Ganich began referring to the above-quoted June 12 document.] ''Recent inspection errors.'' I was—I had some real concerns about him being able to objectively perform his work function. He didn't appear to be happy at Taylor, complaining to me within a week or two that he was worth more money. Also, a couple of the supervisors had run-ins with him. He was giving the Matrix or one of the secondary operators his own instruction. Instead of following the instructions that were given, he was having them make adjustments to machines when he had no authorization to tell them to make adjustments and, also, another—he had requested several times of one supervisor to hire his brother-in-law. He seemed more concerned about the operators and getting his brother-in-law in and getting more money than performing his job function and, also, he did not—he was not developing a good working relationship with the employees in my department. . . .
>
> I mean he was considered a loner. He wanted to do things his own way. He wasn't—
>
> Q. Was there a particular problem with that? What difference does it make as long as he's doing his job?
>
> A. If he was doing his job, there wouldn't be a problem. I didn't feel that he was making an effort to—to learn our system. More to do things his own way. The way, maybe, he had learned at his other place of employment. I don't know, but I had some concerns. . . .
>
> We require—Our group is a pretty close group and, in order to learn your job, it's really helpful to glean information or knowledge from some of the other [quality control department] employees in the office and we are a very open group. . . .

> Q. Now, after you informed Mr. Sanders of your opinion of Mr. Howells, what happened? What did Mr. Sanders say?
>
> A. He agreed that—Not agreed, but we discussed our options and we felt at that time it was best to let him go and replace him with someone that we felt more comfortable with doing the job.

Ganich testified that, after conferring with Sanders, she spoke to Howells in her office and, referring to the above-quoted document, ''I reviewed this with him. I also reviewed the other two incidences. The one regarding my audit and also the one regarding him missing the rejects that he had missed.'' She testified that the document was in plain view for Howells to see as they talked, and she showed it to him, and read it, ''[a]lmost verbatim.''

Ganich was further asked, and she testified:

> Q. Did he ask if this had anything to do with his support or non-support—support of the union or non-support of the company at all? Did that come up during this conversation at all?
>
> A. I assured him that had nothing to do with it and, again, I didn't understand why that was a question to him because at that point there wasn't really any big union issue. There wasn't any union issue. Therefore, why—how could this have anything to do with James Howells?
>
> Q. Were you responding to a question?
>
> A. Yes.
>
> Q. What did he ask you? Do you recall?
>
> A. He asked me something—I don't remember his exact words—something back to the sign and to campaigning or—and I assured him that that had nothing to do with it.
>
> Q. Did you ever discuss with Mr. Howells or use the term loyalty to the company?
>
> A. No.
>
> Q. You never mentioned to Mr. Howells in connection with either performing his work—
>
> A. I expressed to Mr. Howells how important it was for the company and for him to work for the company to make sure that we protected our quality rating with our customers. If our quality rating goes down the tube by having customer rejects, then we've got auditors from customers coming in and auditing us or we could lose our Q1 [quality rating by Ford Motor Company] if we have an excessive number of rejects and, once you lose your Q1, you lose your Ford work.

Finally, when Ganich was asked about the above-quoted letter of recommendation, she responded that Howells had cried during the discharge interview and questioned his own abilities, and:

> I told him that I didn't feel that he necessarily had to look for employment outside of the quality control field, but that I felt that he has the necessary skills in using the instruments in order to be able to perform certain job functions and so I agreed at that point to outline the instruments that we use in quality control that I knew that he had knowledge of using.

Howells was called in rebuttal. He was shown the document about which Ganich identified as the one that she went over with Howells ''almost verbatim'' during the discharge interview. Howells denied that the document was the same as the ''loyalty'' document that he saw on Ganich's desk when she left the room during the discharge interview.

Ganich did not deny having on her desk a paper that recited ''loyalty,'' although she did deny using that term in the discharge interview. I credit Howells' testimony that, in his discharge interview, Ganich said that he was not loyal enough to the company. I further credit his testimony that he saw on Ganich's desk a list, apparently of reasons for his discharge, which included ''loyalty.''

I further credit Howells' testimony that the list of reasons which Ganich identified as having been gone over ''almost verbatim'' with Howells was not what he saw on her desk during the discharge interview. The list recites that Howells ''was released'' for the reasons that were listed. The use of the past perfect (action completed) tense is a clear indication that it was created after the interview. Moreover, Howells was credible in the denial that he gave. Finally, I credit Howells' testimony that he had not asked for the letter of recommendation that Ganich provided with his last paycheck.

(3) July 6 discharge of Wilson

(a) *Background and alleged threats to Wilson*

Gene Wilson began working for Respondent in 1979 as a laborer; he later transferred to the job of Davenport machine operator. Respondent has 21 Davenport machines which are spindle-platform cutting, shaping, and drilling machines, each of which can produce up to 1000 small automobile parts per shift. Davenport machine operators operate three machines at a time. They do not set up the machines; they sharpen the grinding and drilling tools used by the machines, load the machines, and watch the machines as they (not the operators) cut and form the parts. The Davenport machine operators do regular checks of the machines' production. The checks are recorded on ''P-charts'' on which the Davenport machine operators state how many parts where checked in a given hour of the shift and the nature of any defects that are found. If a Davenport machine operator finds defects during his spot checks, he places a yellow tag on the lot that was produced since the last spot-check, indicating that further inspection is needed. If a Davenport machine operator's spot-check, or subsequent inspection, indicates that a serious problem is present, the operator shuts down the machine until the source of the defect is found. The Davenport machine operator either fixes the machine, or calls a repairman, or supervisor, to fix it. Before or after the machine is adjusted, the Davenport machine operator will inspect all parts in the suspect lot to see if there are any good ones that can be shipped. Quality control department employees (such as Howells once was) do line inspections also; if they find defects in bins of parts upon which the Davenport machine operator has not placed a yellow tag, they place a red tag on the lot, and that lot must be inspected to see if there are a sufficient percentage of good parts present; if not the entire lot must be scrapped. If a line inspector does not ''red tag'' a lot of parts, it is sent to the quality control department for ''outgoing,'' or final, inspection.

I have described above the alleged interrogation of, and threat to, Wilson by Cassiopia on the first workday after the Union's initial organizational meeting of January 26. The complaint, paragraph 8, further alleges that, in violation of Section 8(a)(1):

> (f) About early February 1992, and early April 1992, Respondent, by its agent David Sanders, impliedly threatened employees with discharge if they selected the Charging Union as their collective bargaining representative.

Wilson testified that in February, when he was in an office area talking to Sanders about another matter, Sanders referred to an IAM pencil that Wilson was carrying. According to Wilson:

> [Sanders] asked me what it was. He didn't—He said I can't believe you would do this to the company, because he seen the union symbol on the pencil.
>
> I just told him it was a pencil. . . .
>
> He said something about my heart condition; that, if I was to lose this job, that I would have a hard time finding another job due to my pre-existing heart condition.

Wilson testified that he did not reply.

Wilson further testified that shortly after the March 25 election, he was asked to become an ''adviser'' for the Davenport machine operators. A few days after that, Wilson was again in the office area to ask about his vacation; he met Sanders again and:

> I told him I was an adviser for the Davenport section for the Union to let them know what was going on; that they would be getting a letter from the Union that I was an adviser. . . .
>
> [Sanders responded that] he couldn't believe I would do that to the company. . . . Then again he brought up my heart condition; that I'd have a hard time finding a job because of my pre-existing heart condition.

Wilson testified that he did not reply.

On direct examination, Sanders was asked if he had met with Wilson in the office; Sanders replied that he had two meetings with Wilson in which Wilson's vacation time was discussed. Sanders was then asked:

> Q. All right. Now during these conversations regarding his vacation, did you ever comment to Mr. Wilson, regarding a pencil that he had in his pocket?
>
> A. I don't recall any such thing like that.

Sanders was very detailed, however, about his exchanges with Wilson about Wilson's vacation. Sanders was finally asked, and he testified:

> Q. All right. And did you ever make any comments to Mr. Wilson regarding a heart condition?
>
> A. No.
>
> Q. Regarding a possible loss of employment because of his Union activity?
>
> A. No.

In making credibility resolutions, it is first to be noted that Sanders did not deny Wilson's testimony that he told Sanders, during a conversation about vacations, that he had become an adviser for the Davenport machine operators. Sanders' not being asked about this poignant testimony was an obvious dodge; it obviated the necessity of asking him what his response had been. This is to be contrasted with Sanders' very detailed testimony about Wilson's vacation request and Sanders' response to that. Sanders remembered the conversation, but counsel led around the part that is most relevant to this case.

Sanders' ''I don't recall'' answer to the question about ''a pencil'' was another dodge. Wilson did not testify about ''a pencil''; he testified about an ''IAM pencil.'' As well as the lawyer who phrased the ''a pencil'' question, Sanders was present when Wilson gave his specific, dramatic, ''IAM pencil'' testimony.[11] Sanders' ''I don't recall'' answer could be credible only if he had premised it, or explained it, with further (credible) testimony that he regularly commented about employees' IAM pencils, or any type of pencils, and this particular instance was lost in memory among all the others. Finally, Sanders was not asked what else, if anything, was discussed in the ''vacation'' conversations; instead, counsel led him immediately to denials, as quoted above. Sanders was incredible in all of this evasive, conclusionary, exercise. I credit Wilson.

(b) *Wilson's discharge and evidence in defense*

Wilson testified that, in his 13-year tenure with Respondent, he received only one written warning notice before the Union's organizational attempt, and this testimony is not disputed. Wilson received a series of written warning notices before his July 12 discharge; to wit, April 30, May 11, two on June 2, June 18, and one on June 23. With one of the June 2 warnings, Wilson also received a 1-day suspension; with the June 18 warning, Wilson was threatened with discharge. All of this discipline was stated to be for inferior production. Neither the warning notices, nor the suspension, nor the threat of termination, are alleged to be violative.

Wilson acknowledged that he had production problems; he testified that they began after another Davenport machine operator, David Carr, quit and he was assigned to the machines that Carr had been operating. Wilson further testified that Carr had experienced difficulty operating the machines, and that was the reason that Carr quit. Wilson attributed his admittedly unsatisfactory production to the same difficulties in operating the machines that Carr had experienced and an inability to keep up with the paperwork (the P-charts).

Even though the General Counsel called Carr as a witness on other matters, he did not ask Carr to corroborate Wilson's testimony about whether Carr had experienced difficulty with the machines to which Wilson was assigned; nor was Carr asked to corroborate Wilson's testimony about why he had quit. According to records produced by Respondent,[12] Carr quit on June 19, before all but one of the warning notices was issued to Wilson. Therefore, Wilson's testimony that his production was caused by bad machines that he took over from Carr cannot be the fact. Additionally, Respondent pro-

[11] Sanders was Respondent's rule 615(2) witness.

[12] See R. Exh. 9.

duced credible evidence that Carr quit because he was denied a wage increase.

Wilson testified that on July 12 he was called into Sanders' office. Sanders showed him a box of ''bad'' parts and said that Wilson had produced them the previous week, and had not yellow-tagged them. Sanders said that Wilson was discharged because of his repeated poor production. Wilson asked to be reassigned to another job, not other machines,[13] but Sanders said that Respondent had no other jobs for him.

General Counsel called former employee Kenneth Watson who testified that he was assigned to Wilson's machines after Wilson was discharged. Watson testified that he had trouble with the machines, as well. Watson worked at the machines for 2 weeks, then he took vacation, and then he quit.

Respondent called repairman Jack Ferguson who testified that the Davenport machines were in good condition and, in his opinion, most of Wilson's problems were caused by his failure to keep his machines' tools sharpened. Ferguson signed a union authorization petition, and the General Counsel makes no attempt to ascribe his testimony to hostility. When on direct examination, Wilson was asked to describe the duties of a Davenport machine operator; he did not mention the duty of keeping his tools sharp. Supervisor Bertram testified that Wilson's problems were often caused by his failure or refusal to keep his machines' tools sharpened, and that he told Wilson so. Wilson was not called to rebut this testimony. Bertram further testified that Wilson chronically refused to yellow-tag his own production when problems were apparent, and he failed to shut down the machines to call for help. I found this testimony credible. Respondent further showed that on May 16, 1991, Carr was given a warning notice for bad production; Supervisor Bertram testified that after getting that warning notice, Respondent had no further problems with Carr's production. The General Counsel offered no rebuttal to this testimony (in the form of warning notices that might have been issued to Carr or anything else).

Bertram was on vacation during the week that Wilson was discharged. Secondary Department Supervisor Perkins assumed Bertram's responsibilities that week. Perkins testified that during that week employees of the quality control department informed him that Wilson had been running bad parts. Perkins testified that he confronted Wilson about the report from the quality control department, and ''He told me he didn't give a shit. It had been running that way for weeks.'' The General Counsel did not call Wilson to rebut this testimony.

(4) The August 6 transfer of secondary operations and six layoffs

(a) *Alleged threat by Jones*

On August 6 Respondent terminated its secondary operations at its Taylor, Michigan facility and moved those operations to a facility in Barbourville, Kentucky. The complaint makes these actions the subject of Section 8(a)(3) and (5) allegations.

[13] Wilson asked to be placed ''on chips.'' That was not explained, but witness Rick Engle ''pulled chips'' *before* becoming a machine operator, so whatever ''chips'' was, it apparently was not a machine operator's job.

Respondent's secondary operations perform supplemental processing on 50 to 60 percent of the production by Respondent's core operations.[14] The secondary operations include, but are not limited to, the Matrix operations. The Matrix operations have one function: the application of Locktite, a commercial sealant, to specific brass parts which are purchased by Ford. The other secondary operations involve the milling, drilling, and/or slotting of various brass and steel parts that are purchased by various customers, including Ford. The machines involved in the secondary operations are two Matrix machines, six Pellows (milling) machines, six broaching machines, one drill press, and one vertical milling machine. The two Matrix machines require six employees for operations, one operator and two loaders each. The number of employees assigned to the other secondary operations machines vary in number; Sanders estimated that during the organizational attempt there were as many as 10 employees employed in the non-Matrix portion of the secondary operations.

Paragraph 8 of the complaint alleges that, in violation of Section 8(a)(1):

> (bb) About mid July 1992, Respondent, through its agent Charles W. Jones, threatened employees with unspecified reprisals because of their activities on behalf of and support for the Charging Union.

In support of this allegation the General Counsel also called Charles Warren, husband of alleged discriminatee Bonnie Warren. Warren testified that in July:

> At this time I had went in to talk to Mr. Jones about that if they was going to be another election at Taylor Machine Products. And due to all of the problems that had come up between my family and everything that I probably wouldn't support another election if they was one held at Taylor Machine Products.
>
> And he said at the time that he appreciated me coming in and telling him that but we didn't have to worry that no union would never win another election at Taylor Machine Products.
>
> And he told me he was very dissatisfied with [me] because I had took part in it and that things would never be the same between me and him again as long as I worked at Taylor Machine Products. And that he knew that the women was the biggest part of this problem that we had had, the reason why the Union was trying to get in there and that he would take care of them too.

As noted, all secondary-operations employees were women; none of the core operations employees were women, at least according to this record. On a stipulated list of employees, there is only one feminine given-name in addition to those of employees who were identified as working in the secondary operations; that one name is ''Caroline,'' the first name of Kiracofe, the quality control department employee who acknowledged being ''bitterly'' antiunion. I find that Jones' alleged reference to ''the women'' could only have been referring to the secondary-operations employees.

[14] Sanders testified that, ''50 or 60 per cent of everything that we sell, doesn't go through any secondary [operations].''

In defense, Jones testified that he met with Warren after Sanders had reported to him that Warren wished to meet to express a change in his attitude about the Union. Jones was asked and he testified:

> Q. And did he say—Did you have the same conversation with Mr. Warren that Mr. Sanders had?
>
> A. Basically, yes. It was the same conversation, yes.
>
> Q. And what did you say to Mr. Warren in response to his comments?
>
> A. I thanked him for coming in and expressing his concern.

Fully recognizing the interest that Warren has because his wife is an alleged discriminatee, I nevertheless credit Warren. Although interested, Warren is a current employee who is subject to recrimination for his testimony, and he necessarily realizes that recrimination is more likely if his testimony is false. Also, Warren is a very long-service employee; he occupies a position that is one of the best paid in the plant[15] ; and I doubt that he would risk his position in an attempt to secure his wife's backpay for, and reinstatement to, the unskilled, relatively low-paying, job of a Matrix machine operator. Finally, Jones did not testify that his *only* response to Warren was to thank him. To the extent that Jones' testimony was intended to have this effect, I discredit it because I cannot credit the cryptic, oblique testimony by Jones against the fully developed, specific, potentially decision-altering testimony by Warren.

I find that the General Counsel has proved, by a preponderance of the evidence, that the conduct of Jones, as described by Warren, occurred.

(b) *The layoffs and evidence in defense*

By letter dated August 6, Respondent's counsel informed the Union:

> This letter is to inform you, as a courtesy and not as recognition of the International Association of Machinists and Aerospace Workers as a certified bargaining representative of the employees of Taylor Machine, or that Taylor Machine's decision to relocate a portion of its operations is a subject requiring bargaining.
>
> Enclosed is a notice which was posted at Taylor Machine today and explained to those employees affected. For over a year, Taylor Machine's customers in the Southeast auto belt and surrounding area have been requesting that Taylor Machine relocate specific operations to provide ''just in time'' delivery. Taylor Machine has been planning its expansion to the Southeast for an extended period of time prior to its implementation today.
>
> If you would like any additional information or would like to discuss the matter in further detail, please contact me.

''Just in time'' is an industry concept whereby suppliers do the warehousing; through the facilities of modern transportation, deliveries are accomplished, sometimes overnight, throughout the world. The notice that was enclosed in the lawyer's letter reads:

> On Monday, August 10, 1992, Taylor Machine Products, Inc., will open a new Southeastern facility to service the needs of our large customer base in that area.
>
> Concurrent with this opening, Taylor Machine Products will be ceasing all Secondary and [i.e., including] Matrix operations in our Michigan plant on August 6, 1992 to allow for the expansion of our base [core] screw machine business in our current facility.
>
> Taylor Machine Products, Inc., wants to assure all of our employees that we intend to continue our core business here in Michigan just as we have for the last 25 years.

The notice was signed by Jones.

On August 6, at the end of their shift, Sanders read the quoted notice to the secondary-operations employees, and that was the last day of work for six of them: Bonnie Warren, Josephine Mallia, Ruth Cecil, Floria Russell, Vernadette Bader, and Rosemary Smith. By August 6, the other secondary-operations employees had quit or had been transferred to other jobs in the plant. The secondary-operations machines were moved to Kentucky at some point after the August 6 announcement and layoffs, but it is not clear when that was.

The General Counsel contends that the move of the secondary operations was conducted because of Respondent's hostility toward the union activities of its employees, in general, and the union activities of the secondary-operations employees, in particular. Specifically, the General Counsel contends that secondary-operations employees were known to be particularly prounion, that Respondent would have believed that they would vote for the Union in any rerun of the March 25 election, and that the August 6 move was conducted to prevent the secondary-operations employees from voting in any election that might be conducted pursuant to the May 28 recommendation by a Board hearing officer that the election be set aside. Respondent contends that the move was planned before it had knowledge of the organizational activity and that it was premised solely on economic considerations.

Kenneth Riddle is Respondent's materials manager; as such he is ''the main customer contact and vendor contact,'' as he phrased it. Riddle testified that, in the industry, the prices of suppliers (such as Respondent) are quoted f.o.b. the shipping plant; purchasers pay the shipping costs. Riddle testified that, although the secondary operations have been moved to Kentucky, Respondent does not ship to customers from there, even though purchasers would pay the freight from there if it did so. Rather, Respondent now ships that portion of the core production that is to receive secondary processing to Barbourville, Kentucky, a distance of about 400 miles from Taylor, Michigan. The secondary processing is performed in Kentucky; then Respondent ships that production back to Michigan for inspection, packaging, and shipment to customers, and the customers pay the freight from Michigan.

Riddle testified that Respondent is attempting to get bar codes and other technicalities satisfied so that it can begin shipping out of Kentucky, but, at the present, Respondent cannot do so. Even if the bar-code problem is worked out, some of the Kentucky production will still have to be shipped back to Michigan before being shipped to customers;

[15] See G.C. Exh. 6; Warren is the highest paid of the 39 authorization petition signers.

this would be all of the Kentucky production that is purchased by Ford (including, but not limited to, all of the Matrix production).

The reason that Respondent cannot ship anything from its Barbourville, Kentucky, plant to Ford lies in quality demands by Ford. Ford will not accept any parts that are not shipped from a plant that has not awarded its ''Q-1'' rating. A Q-1 rating indicates that Ford has done extensive reviews of a factory's production and inspection procedures, and that factory has been approved as a source of supply. Respondent's Taylor, Michigan plant has been rated Q-1; Respondent's Kentucky plant had no such rating by August 6, and it still did not have one at time of trial, a year later. Respondent cannot sell to Ford indirectly from Kentucky, either; Ford's other suppliers, to whom Respondent sells subassembly parts, are not permitted by Ford to accept parts from non-Q-1 facilities.[16]

At the hearing Respondent contended that, while labor costs were not a consideration in the move, decreased labor and other costs in Kentucky have more than off-set the shipping costs that it has incurred in shuttling parts between Michigan and Kentucky. Respondent further contends that: (1) the establishment of the Kentucky facility was to create a ''presence'' in the South; (2) creating this ''presence,'' has increased its attractiveness to customers located in the South; (3) confidence that this would be the case was the reason for moving all secondary operations, including the Matrix machine operations, to Kentucky.

Respondent called Jones and Sanders in support of these contentions. Much of their testimony centers on Respondent's relationship with two customers, Johnson Controls and Dura Manufacturing. At some point, Dura bought a plant of Johnson, and the names were used interchangeably by Jones and Sanders. I shall refer to the customer as Johnson/Dura.

Jones testified that in late 1989 or early 1990 he was informed by a manager at Johnson/Dura that his company was establishing a plant in the South. According to Jones, that (unnamed) manager ''thought that it would be a good idea for—if we wanted to continue to do business with Dura, to establish a presence in the South, wherever.''

Jones further testified that ''I just instructed them [apparently, Sanders and his subordinates] that we wanted to move all of our secondary operation down there.''

When asked when this occurred, Jones replied ''Oh. We actually made up our mind about what we were going to do probably around August of 1991.''

Jones was the asked, and he testified:

> Q. All right. And why in fact did you wait—take eight or nine [sic] months until you moved the facility in August of 1992?
>
> A. Well, we were put on notice in January of 1992, by the IAM, about the union activities, or that they had filed a petition against [Taylor] Machine.
>
> So in a meeting with counsel, they instructed me not to do anything—make any move at this point in time.

The unnamed manager of Johnson/Dura was not called by Respondent; the attorney allegedly advising Respondent to delay its plans to move the secondary operations to Kentucky was not called by Respondent.

Sanders testified that he first learned of the organizational activity when Respondent received a January 27 letter from Union Representative Kenneth Walsh stating that a petition for Board election had been filed that date. Sanders then testified about pre-January 28 measures Respondent had taken toward creating ''a presence in the South,'' as Jones phrased it.

Sanders testified that, in 1989, when he was first hired by Jones, Jones was upset because Respondent had just lost a ''million dollar'' contract with Johnson/Dura. Johnson/Dura then had plants in Lexington, Linden, Pikesville, and Gordonsville, Tennessee. Sanders and Jones visited each plant of Johnson/Dura to improve relations. According to Sanders, he and Jones found that the Johnson/Dura plants in the South ''had started resourcing a lot of their business [from] a company in Tennessee.''

Sanders also testified that, in late 1990 or early 1991, one John Fretz, a manager of Johnson/Dura, told him that Johnson/Dura was establishing another southern plant and that Respondent would have to locate where Johnson/Dura did if it wanted to keep Johnson/Dura's business. Respondent did not call Fretz as a witness.

Sanders further testified that in 1989 Respondent hired a manufacturer's representative to visit potential southern customers, but it did no good. According to Sanders:

> And the real problem was not manufacturing reps or people making visits, the problem was the buyers in those locations wanted to make purchases from local people.
>
> I mean, that is the essence of the business in that—I'll say neck of the woods.
>
> And unless we had a presence down there, we weren't going to be considered for future business by the local buyers. . . .
>
> The next thing that we started doing was looking for companies that might be for sale that were in that part of the country.

The point at which Respondent ''started . . . looking'' for another plant would be the point at which Respondent made a decision to move part, if not all, of its operations to the South. Sanders did not fix this date in his direct examination, but, as noted, Jones placed his decision at ''probably around August of 1991.''

Respondent found a plant for sale, and business, in Barbourville, Kentucky. The plant, 100,000 square-feet in size, was owned by Jerry Strong who operated Strong Machinery. The price Strong requested was too high, Sanders testified, so Respondent decided to lease space to which it could move the secondary operations and create the needed ''presence in the South.'' Sanders identified a letter dated October 4, 1991, from Sanders to Strong, expressing an intention to lease space and ''to open a screw machine products manufacturing facility'' in southeastern Kentucky. The letter further states that, within 5 years, Respondent would be making $5 million in sales and employing 30 to 35 employees at the sought-after facility. The letter bore the express qualification: ''TMPI will need assistance initially in training, low-interest financing, and tax abatements during this 5-year start-up program.''

[16] This paragraph represents a synopsis of testimony by Sanders, Riddle, and Ganich.

Sanders enclosed a brochure to illustrate ''the type of business we *would* bring to the community'' if the assistance were granted.[17] Sanders testified that this letter was sent to Strong but it was really written for the benefit of the Kentucky Economic Development Council; the object of the letter was to secure some State financing for a move of the secondary operations to Barbourville. Sanders identified other correspondence reflecting that he and Strong had met with Kentucky officials on October 31, 1991, to discuss State-aided financing for the establishment of a manufacturing business in the Barbourville area.

Sanders testified that ''in early January,'' when Jones returned from a vacation:

> [Jones] and I discussed—and what I described as our final discussion when he got back, where I had—in other words, this was the plan, this is what we were doin'—and Charlie [Jones] had a few things he wanted me to check. Uh, I wouldn't characterize it as a concern, but Charlie wanted to make sure that we weren't creating a catastrophic financial problem for the company by moving secondary down there, so that's why that study was done.[18] Then in January, when—all I did was confirm to Charlie that we're moving secondary when he got back, at the very beginning of the year, we're moving secondary. He expressed another concern to me and I expressed a concern to him. I said, you know, secondary is not going well as far as—secondary is—uh—the Matrix piece of secondary was not going well hiring people, or keeping people on the job. But he and I had a concern—he had a concern of are we really gonna ship the parts down to Kentucky, and then are we really gonna ship those parts right back here and then send them to Ford on the brass bulbs that are Lock-Tight coated; and I had a concern, could I really run knowing the level of difficulty the Matrix machine in Kentucky versus in Michigan; so there was a reluctance on that part.
>
> The circumstances that surrounded that decision—why the Matrix went too—uh—I would have to describe—then I'd have to get into what were the circumstances that led to why the Matrix eventually went.

Sanders then testified that the ''circumstances'' that forced the decision to move the Matrix operations, as well as the rest of the secondary operations, were (1) there was a difficulty in keeping personnel to operate the Matrix machines; (2) the supervisor of the secondary operations, Perkins, was going to be moving to Kentucky; and (3) Ford was going to phase out its programs that required the Matrix operations in a few years, anyway. Sanders also testified:

> We don't look at the Matrix operation as that much of the move, I guess. It was the afterthought, if you will, of how's it gonna go, and it might as well go for those reasons.

Respondent introduced a time-line chart purporting to reflect difficulty in staffing the secondary operations. The chart is so vague as to be meaningless; moreover, Respondent introduced no evidence of any effort to staff the department (such as placing an advertisement in a Detroit or other local newspapers). Sanders further testified that, during 1991, Cecil and Smith indicated that they were going to retire in 1992. Secondary-operations employees Cecil and Smith were called in rebuttal and credibly denied this testimony. Also, there was no evidence, other than Sanders' testimony, that Ford intends to discontinue its need for the Matrix production.

The ''study'' to which Sanders referred is an accounting statement that I shall characterize as ''informal'' because: it is handwritten, on notebook paper; it was created by an individual who has no discernable qualifications as an accountant;[19] and it bears no claim that its conclusions are based on generally accepted accounting principles. The informal statement indicates that Respondent could operate all secondary operations cheaper in Kentucky than in Michigan. The statement, dated (twice) ''January 16, 1992'' did not include the costs of transferring machines to Kentucky, or the costs of continually sending the production of the secondary operations 400 miles to Kentucky, or transporting it 400 miles back, but Sanders testified:

> Well, the difference in the labor cost in Michigan and labor cost in Kentucky, and benefit costs both places, Workman's Compensation and all those things, offset the cost of running our own truck back and forth.

The informal accounting statement did not estimate how long it would take Respondent to recover its (not-estimated) moving costs by this reduction in labor and other costs.

About the informal accounting statement Sanders was asked on direct examination, and he testified:

> Q. Mr. Sanders, was this document not in fact a part of your further analysis in connection with the move of the secondary Matrix decision which Mr. Jones asked you to perform?
>
> A. It was a part of the further analysis. It was really just making sure that we were not generating a huge negative cost situation. We didn't move down there based on cost, if that's what you're saying.
>
> We moved down there to establish the presence.

Sanders testified that the rest of the secondary operations could have been moved without moving the Matrix machines.

On direct examination Sanders did not indicate when a final decision to move part, or all, of the secondary operations was made. During cross-examination, he was asked:

> JUDGE EVANS: All right. When was the corporate decision to move the Matrix machines as well as the rest of the secondary department?
>
> THE WITNESS: The corporate decision—uh—to move all secondary, including Matrix, was made in very early January of 1992, with only some reservations.
>
> JUDGE EVANS: About what?
>
> THE WITNESS: Those reservations are being—characterized as a second decision which I have agreed—would actually be a secondary decision, but—uh—finalization of those reservations—uh—did not occur until—

[17] Emphasis is supplied.

[18] The study to which Sanders referred is described below.

[19] Transcript correction has been noted and corrected.

those reservations about the Matrix area did not occur until July—uh—or it was in the process all during that time frame, but I'll say finally, July of '92.

No documentation was presented to support Sanders' testimony that some decision was made ''in very early January,'' or before Respondent received notice of the Union's petition on January 28 or 29.

Sanders testified that Respondent has received a great deal of business at the Kentucky facility since the move of the secondary operations. There is no documentation about the size of this new business, and there is no evidence that any new business was placed with Respondent because its secondary operations were in Kentucky, rather than Michigan.

Sanders acknowledged that, in all other cases, increases in prices to Respondent are passed along to customers; however, the increase in costs that Respondent has incurred by shuttling Matrix machine production between Michigan and Kentucky were not passed on to Ford. Then Sanders was asked, and he testified:

Q. Why didn't you in this case?

A. It didn't increase Taylor Machine Products' costs overall. . . . The freight costs, okay, are an increased cost, but there were other offsetting costs that reduced the cost, so net of net, it was less cost.

Q. What costs were reduced?

A. Well, there were costs of labor that were reduced. Uh, there were costs of—uh—everything from, you know, insurance to—there were various costs that were reduced.

Q. But those costs played no part in the decision to move the secondary and Matrix departments down south—those cost savings?

A. No, they—they were not a direct portion of a decision. If it had been a huge cost increase to the company, then I—I guess it would've become a portion of the decision, but it would've had to been a terribly—uh, huge price not to do it because the objective was to establish a presence. It didn't matter whether it was secondary or Matrix or whatever—establish a presence in the Southeastern area.

Respondent offered no documentation by which its new freight costs can be compared with its new costs of conducting the secondary operations in Kentucky.

Respondent's lease of the Barbourville properties is dated June 4, 1992, effective July 1, 1992. It did receive certain tax and other considerations from the State of Kentucky, but not until November 1992.

B. *Analysis and Conclusions*

1. Alleged 8(a)(1) violations

a. *Threats*

On the first workday following the Union's well-attended meeting of January 26, Cassiopia called Charles Warren and Gene Wilson, separately, to his office. He told Wilson that Jones would close the plant if the employees were successful in their organizational attempt, and he told Warren that some employee was going to get fired because of the union activities. Later in the same week, he called Bonnie Warren and Elmer Ferrell into his office; he told Warren that the shop was too small to have a union and that the doors would be closed if the employees were successful in their organizational attempt; he told Elmer Ferrell that Jones would close the plant if the employees were successful in their organizational attempt.

Also on the first workday following the January 26 union meeting, Bertram called Marquess into the office and told him that ''a lot of people would lose their jobs'' if the employees were successful in their organizational attempt. Later, Bertram pointed to all of the visible employees and told Marquess ''a lot of these people are going to lose their jobs'' if the employees were successful in their organizational attempt.

Both when Wilson displayed his IAM pencil to Sanders, and when Wilson announced to Sanders that he was an adviser for the Davenport section, according to the testimony of Wilson that I have credited: ''[Sanders] said something about my heart condition; that, if I was to lose this job, that I would have a hard time finding another job due to my preexisting heart condition.''

A more brutal threat is difficult to imagine.

Finally, Jones, himself, just before the August 6 layoffs, told Charles Warren that he knew that the organizational attempt started with the women of the secondary-operations department and that ''he would take care of them too.''

These are threats in violation of Section 8(a)(1), as I find and conclude.

b. *Interrogations*

When Cassiopia called Warren into his office on January 27 to tell him that employees would be fired because of their union activities, he also asked Warren what he knew about those activities. A few days later, Cassiopia asked Ferrell ''who had started the drive.''

Also on January 27, Gratowski called Singleton to his office and asked if he had been contacted by the Union, and he asked what progress had been made in the organizational attempt.

Also on January 27, Bertram called Marquess to his office and asked if union representatives had been to his house and he asked what the organizational attempt was ''all about.'' Thereafter, Bertram repeatedly asked Marquess what was going on at union meetings and why Marquess wanted a union; in the process he threatened Marquess with retaliation against the employees if the employees were successful in the organizational attempt.

During the campaign, Perkins asked Tiszai and some of the employees working around her what they thought the Union's success possibilities were and, specifically, who would vote for the Union. At times, Perkins would accompany his interrogations with threats, as found violative above. Also, Ganich questioned Howells about why he would not campaign against the Union and, when she did not like Howells' answer, she threatened him with plant closure, as also found violative above.

All of these interrogations, and especially those which were accompanied by threats and those that were conducted in the office, the locus of managerial authority, violated Section 8(a)(1), as I find and conclude.

c. *Impression of surveillance*

When, on January 27, Cassiopia called Warren to his office to threaten and interrogate him, he also sounded out Warren about whether he, Ferrell, and Cobb were the ''ring leaders.'' Although this conduct was a violative interrogation, there was no hint by Cassiopia about why he used those employees' names. Certainly, there is no intimation that Cassiopia had learned the names by acts of illegal surveillance, as the complaint implicitly alleges. Therefore, I shall recommend dismissal of this allegation.

d. *No-distribution rule*

The no-distribution rule quoted above necessarily includes a prohibition against distributions of literature, including literature that relates to the employees' protected, concerted activities, in nonworking, as well as working, areas of Respondent's plant. As such, the rule is unlawfully broad, and violative.[20] Accordingly, I find and conclude that, by maintenance of that rule in its current employee handbook, Respondent has violated Section 8(a)(1).

e. *Harassment*

The Holicki brothers were nothing other than common bullies. They were in a position to make life miserable for the secondary-operations employees, and they did so. Respondent's supervisors knew that the Holickis were antiunion because of the buttons that they wore and because of what they wrote on the boxes that they put on their heads, and on the end of long poles, for all to see. Respondent knew that the secondary-operations employees were prounion: many of them were outwardly identifiable as prounion because they wore union buttons; Perkins regularly made the secondary-operations employees the object of interrogations; Perkins told Smith that he could not believe that she was for the Union; Perkins subjected Cecil to a threat of plant closure; and Owner Jones, himself, told Charles Warren that he knew that ''the women'' were behind the union activities.

Respondent's supervisors knew that the harassment was being conducted, and why. It was conducted in plain sight; the Holickis wrote antiunion slogans on the boxes that they used; and the secondary-operations employees, and the husbands of two of them, complained to supervisors.

Nevertheless, before the March 25 election, Respondent's supervisors refused to discipline the Holickis over their conduct. Instead, they called them aside for congratulatory laughs in plain sight of the men and women who had complained, necessarily humiliating the victims all the more. Even after the election, when the harassment continued, Gratowski's memorandum of April 8 was the most ''discipline'' that the Holickis received; that memorandum, at most, was a verbal warning, which is to be compared to the many written warnings, and suspension, and termination of alleged discriminatee Wilson.

I find and conclude that by permitting and condoning the harassment of the secondary-operations employees because of their union or protected concerted activities, Respondent violated Section 8(a)(1) of the Act.

[20] *Stoddard-Quirk Mfg. Co*., 138 NLRB 615 (1962). The violation is proved, even if the rule was not, in fact, enforced. *J. C. Penney Co*., 266 NLRB 1223, 1224–1225 (1983).

2. Alleged 8(a)(3) violations

The law dispositive of the 8(a)(3) allegations is stated in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983). The General Counsel has initial burden of establishing a prima facie case sufficient to support an inference that union activity, or other concerted activity that is protected by the Act, was a motivating factor in an employer's action that is alleged to constitute discrimination in violation of Section 8(a)(1) or (3). Once this is established, the burden shifts to Respondent to come forward with evidence that the alleged discriminatory conduct would have taken place even in the absence of the protected activity. If Respondent goes forward with such evidence, the General Counsel ''is further required to rebut the employer's asserted defense by demonstrating that the [alleged discrimination] would not have taken place in the absence of the employee's protected activities.''[21]

In cases of discharges or other discipline, to meet its burden under *Wright Line*, it is not enough for an employer to show that an employee, for whom the General Counsel has presented a prima facie case of violative discrimination, engaged in misconduct for which the employee *could have* been discharged or otherwise disciplined. The employer must come forward with evidence that it ''*would have*'' discharged, or otherwise disciplined, the employee for the misconduct in question. *Structural Composites Industries*, 304 NLRB 729, 730 (1991); emphasis is original. In cases of layoffs, the employer must show that ''the layoffs would have occurred even in the absence of the employees' protected activities.'' *Virginia Metal Products*, 306 NLRB 257, 259 (1992).

Therefore, the first inquiry is whether the record contains a prima facie case of discrimination proscribed by the Act, or credible evidence that: (1) the alleged discriminatory acts occurred; (2) the Respondent knew or suspected that the alleged discriminatees had engaged in union or other protected concerted activities at the time that it decided to discipline them or lay them off; and (3) that Respondent's decision to discharge or lay off the employees was motivated, at least in part, by animus toward those activities. *Chelsea Homes*, 298 NLRB 813 (1990). If such a prima facie case is held to have been established, an inquiry will be made whether the defense presented, if any, has been rebutted, either by showing that the defense is without factual basis or by a showing that it is pretextual. *Electro-Wire Truck Products*, 305 NLRB 1015, 1023 (1991); *St. Luke's Hospital*, 312 NLRB 425 (1993).

a. *Denials of leave to Warren and Ferrell*

General Counsel contends that Betty Ferrell was denied the benefit of a leave of absence in 1992. The General Counsel does not appear to contend that the grant should have been made even without a request; to the extent the General Counsel does make such contention, Respondent has met it with proof that wives in the plant did not always take a day of unpaid leave on each day of the husbands' paid vacations. Without leave requests, Respondent would not have known which days a wife wanted as her leave of absence. I have

[21] 251 NLRB at 1087.

found that Betty Ferrell did not request a leave of absence in 1992; she announced that she was going; and she went. In this posture of the case, it must be held that the General Counsel has not presented a prima facie case that Respondent performed the alleged discriminatory act of denying Ferrell a leave of absence. Accordingly, I shall recommend dismissal of the allegation as it relates to Ferrell.

The facts are different in the case of Bonnie Warren's leave of absence request.

As Jones told Charles Warren, he ''thought it was important that the families go on vacation together.'' For several years, then, Respondent allowed Bonnie Warren to take an unpaid leave of absence when Charles Warren took his paid vacation. But, when Bonnie Warren asked for a leave of absence in 1992, to go with Charles Warren on his paid vacation, she was denied. As she was told by Perkins, the reason was that ''too many women were taking too much time off and Dave Sanders was putting a stop to it.'' The leave of absence was thus denied at that point. The Warrens later attempted a subterfuge to secure the leave, but they were outmaneuvered by Sanders who called Warren in to work to ''supervise'' other employees.

Both Warrens were known union adherents; both had been singled out by Cassiopia for threats and interrogations. Because of these facts, and the abundant other evidence of animus on the part of Respondent, I conclude that the General Counsel has presented a prima facie case of discrimination against the Warrens by denying Bonnie Warren a leave of absence during which she could go with Charles Warren on his paid vacation in 1992.

Respondent points to the ''customers' requirements'' rule of its employee handbook and contends that Bonnie Warren was needed for production. Specifically, Respondent relies on Perkins' testimony that Warren was needed on March 30 through April 1 for the production of the 658 brass bulb. When asked if that order had any particular urgency, Perkins responded that he wanted to ''elaborate''; then he stated only that Riddle ''could'' ask for 100,000 parts and, if so, he ''would'' get them out ''post haste.'' Respondent does not contend that there was any such order; to the extent that such a contention is implicit, it is not supported by evidence (like corroboration for Perkins' intimation that such an order existed with testimony by Riddle or by production of the written order that ''compelled'' the need for Warren's presence on those particular days.)

Even if there had been some 100,000-piece order, or anything like it, it is unlikely that Perkins could have known of it when, in early March, he denied the request for leave of absence. If Perkins had known of such an order when he denied the request, he most probably would have told Warren; instead, he stated only that Sanders had that ''too many women were taking too much time off and Dave Sanders was putting a stop to it.'' And the term ''women'' had become a shorthand phrase for the prounion secondary-operations employees, as made clear by the multiple threats found herein.

Being a Matrix machine operator is not a skilled job; operators are fungible. To be sure, the Matrix machine that Bonnie Warren operated was the more difficult of the two; however, both Edwards and Ferrell were there to operate the machine, if Respondent had cared to use them. Respondent tried to pass off Edwards as something of a trainee, but she had operated the machine before, apparently without ''supervision'' of any other employee, and there is no suggestion of a reason why she could not have done so during the period requested for leave by Bonnie Warren. (Certainly, there is no suggestion that Perkins checked on Bonnie Warren's ''supervision'' of Edwards.)

The early March action of Perkins in denying Warren's requested late March leave of absence appears to have been purely arbitrary, whether or not it was mandated by what Sanders had said (about ''too many women . . . taking too much time off). At minimum, Respondent has failed to come forward with probative evidence that, absent the union activities of the Warrens, and other employees, it would have denied the leave of absence requested by Bonnie Warren.

Accordingly, I find and conclude that, by denying a leave of absence to Bonnie Warren, Respondent violated Section 8(a)(3).

b. *Threats to, and interrogation and discharge of, Howells*

The complaint alleges that the questions by Sanders during Howells' employment interview constituted an unlawful interrogation. I disagree. Sanders brought up the topic of the Union, but he was making factual assertions about what had happened, and what may happen, in the representation case. (Some of the factual assertions by Sanders were not accurate, or Howells' recounting was not accurate, but Sanders' statements to Howells were, nevertheless, factual assertions only.) Then Howells brought up the topic of his opposition to being represented by a union. The problematical inquiry by Sanders (whether Howells would work during a problematical strike) would not illogically follow such employee representations of attitude. Finally, on brief, the General Counsel does not argue that there was any coercive element to Sanders' inquiry to Howells. I shall recommend that this allegation of the complaint be dismissed.

Above, I have found and concluded that Ganich asked Howells why he would not campaign against the Union; when he demurred, she threatened him with plant closure. Ganich's violative questioning and threatening of Howells reflect animus by Respondent toward Howells, or any other employee who might not go along with Respondent's antiunion campaign. Moreover, Howells' resistance to Kiracofe and Ganich, coupled with his regularly keeping company with the prounion secondary-operations employees, logically would have led Respondent to believe that Howells, despite his earlier protestations to the contrary, would be a prounion vote in any election ordered pursuant to the May 28 recommendation by the Board hearing officer. At any rate, Howells' expressed resistance was a protected activity, and, in view of the expression of animus directed to other employees, as well as Howells, I conclude that the General Counsel has presented a prima facie case that Howells was discharged unlawfully.

At trial, Respondent offered a listing of five reasons for Howells' discharge. I have found that the listing was created post hoc, but the multiplicity of reasons, itself, bespeaks of a groping for a pretext. Howells was a probationary employee; if any reasons were needed, one would have been enough; and it would have been enough as soon as it surfaced.

The first listed reason for discharge was ''recent errors.'' When asked to explain this, Ganich advanced only the conclusion that Howells was not objective.[22] According to this record, Ganich only had only two discussions with Howells about his performance. The first, on May 2, involved no discipline; it did not include his errors; and it was not ''recent.'' The second, on June 8, involved a ''5 to 10%'' reject of bad parts that Howells missed. The ''5 to 10%'' was not quantified in terms that would indicate the degree of seriousness. Certainly, there is no testimony that the entire lot had to be scrapped.[23] Before Howells was hired, some line inspector and some final inspector had missed a ''large number of parts'' which had been shipped to the customer; nothing, according to this record, happened to them. If Howells' mistake was more serious, Respondent would have demonstrated the fact. Most significantly, there is no evidence of additional errors that were committed by Howells between June 8 and his discharge on June 12.

The second reason listed by Ganich, complaining about money, was not alleged to have caused poorer performance by Howells, or interrupted the work-flow of anyone else; nor does Respondent assert the existence of any policy pursuant to which it discharges employees, even probationary employees, when they ask for wage increases. The third and fourth listed reasons, complaints by Perkins and Bertram, were not corroborated by either of those supervisors; Bertram testified that Howells asked him ''once'' to hire his brother-in-law, but he did not testify that he complained about it to Ganich; Perkins was not even asked about Howells or interference that Howells may have caused with the work of the Matrix machine operators.

The fifth reason, being a ''loner,'' is independently suspicious. None of the quality control department employees outwardly supported the Union, and their leader, Kiracofe, was ''bitterly'' opposed to it. The fifth reason falls squarely within the theory of the General Counsel's case; Howells set himself apart from the other inspectors on the most salient activity in the plant, the union activity; or, at least, Respondent suspected him of doing so. This ''reason'' provides context for the written and oral remarks by Ganich that the ''loyalty'' of Howells was insufficient.[24] Those remarks, and the multiple vague and unsupported reasons for Howells' discharge, make it clear that Respondent was seeking a reason to terminate Howells because he was not enlisting in Respondent's antiunion campaign and, at least, he could well be a ''Yes'' vote in the pending rerun election.

The unsolicited letter of recommendation that Ganich gave to Howells is unqualified. It states that Howells was proficient with every category of technical equipment that he used for Respondent. This is the sort of letter that is written when an employee is being terminated without fault, such as in the case of a bona fide economic layoff. It is hardly the type of letter that would be issued when an employer honestly believes that the employee has a five-part defect which renders him unemployable.

Ganich testified that Howells was not discharged for incompetence, but for failing to follow procedures. An employee whose technical competence is as great as that described in Ganich's letter of recommendation is unlikely to be discharged without categorical warning that his failure to follow procedures may result in discharge; for example, before Wilson was discharged, he was given a clear warning of discharge. That Howells was a probationary employee is no answer for Respondent's failure to give Howells a warning of discharge. Howells had superior abilities, as indicated by Sander's hallway comment about what he had heard about Howells' performance, as well as Ganich's letter of recommendation. Unless it was seeking pretexts for discharge, as I find that it was, Respondent would have given such a technically superior employee clear warning of discharge out of its own self-interest.

I find that the reasons listed for Howells' discharge, and reasserted at trial, constituted a pretext. I conclude that Respondent discharged Howells in violation of Section 8(a)(3) of the Act.

c. *Threats to, and discharge of, Wilson*

In addition to being interrogated and threatened by Cassiopia, Wilson was twice threatened by Sanders. The first time was when Sanders noticed that Wilson had an IAM pencil; the second was when Wilson told Sanders that he had been made a union ''adviser'' for the Davenport machine operators. Both times, Sanders, in brutal terms, reminded Wilson that he had a heart condition and, if he were ever forced to look for another job, he would probably not find one because of that preexisting condition. In view of these threats to Wilson, as well as all of the other evidence of animus that is possessed by Respondent, I conclude that the General Counsel has presented a prima facie case of unlawful discrimination in his discharge.

Even given the exceptional brutality of Sanders' threats to Wilson, however, they do not, alone, make out a violation of Section 8(a)(3) in the discharge.

General Counsel's theory of this case is that, although there was no discrimination in the assignment of Wilson to the machines that Carr had operated, and no discrimination in the warning notices that Wilson received, and no discrimination in the suspension that Wilson received, and no discrimination in the notice of potential discharge that Wilson received, all the warnings being for inferior production, Wilson's discharge for inferior production was violative.

As I have noted, all but one of the warnings that Wilson received was issued before Carr quit and Wilson was transferred to his machines. Moreover, Carr, a prounion employee who was called to testify about his signature on an authorization petition, was not asked to corroborate Wilson's testimony that there were defects in the machines that Carr had operated before Wilson took them over. Also, Carr had operated the machines that Wilson took over for a year, and Carr had not received so much as a warning notice for poor production during that year. Watson was called to testify that he had trouble with the machines after Wilson was discharged, but his testimony was conclusionary and, again, most of Wilson's warnings were received before he was transferred to those machines. Wilson was not called to rebut Bertram's testimony that Wilson's problems largely had to do with his not shutting his machines down when they were malfunction-

[22] Then she immediately went to the second listed reason (complaining about money), thus evading the inquiry.

[23] The procedure that results in scrapped parts is described in the above discussion of Wilson's discharge.

[24] Antiunion employers commonly ascribe disloyalty to prounion employees.

ing and his not keeping his tools sharpened; tellingly, Wilson did not mention the sharpening of his tools on direct examination. At trial, Wilson attempted to portray himself as overworked because he had difficulty in keeping up with the paperwork (the P-charts); however, Respondent demonstrated that Wilson's paperwork duties were no greater than any other core-operations machine operator.

Finally, Wilson told Perkins that he did not care[25] that the machines were producing defective parts, and he did not ask to remain in a machine operators job when Sanders discharged him; that is, Wilson did not seem to care about his job, a further corroboration of Respondent's defense that Wilson was doing the job with inexcusably inferior proficiency.

I find and conclude that Respondent has come forward with evidence that it would have discharged Wilson, even absent his union activities, and the union activities of other employees, especially in view of the suspension of, and categorical warnings of discharge to, Wilson, none of which the General Counsel alleges to be violative. I further find that the General Counsel has not rebutted the evidence that Respondent adduced. Accordingly, I shall recommend dismissal of the allegation that Wilson was discharged in violation of Section 8(a)(3).

d. *August 6 transfer of the secondary operations and six layoffs*

(1) The prima facie case

On the day after the Union's January 26 meeting, Cassiopia called Charles Warren into his office to tell him that Jones was so upset about the organizational attempt and that ''somebody was going to get fired.'' During the same week, Cassiopia called Bonnie Warren into his office for a lecture that, while Ford and General Motors could afford a union, Respondent could not; specifically Cassiopia told Warren that ''the doors would be closed'' if the employees selected the Union as their collective-bargaining representative. Cassiopia made the same threat to Wilson. Bertram waived his arm, pointed to the employees who could be seen from his office's interior window, and told employee Marquess that ''a lot of these people are going to lose their jobs'' if they selected the Union as their collective-bargaining representative. Perkins told Rosemary Smith that Jones would close the plant if the employees selected the Union as their collective-bargaining representative. Ganich threatened Howells with plant closure. And Sanders issued to Wilson the most brutal threat imaginable. Even if this were all of the evidence of animus, it would support an inference that Respondent would discriminate against employees, such as the secondary-operations employees, if they selected the Union as their collective-bargaining representative.

But there is more; and it is conduct directed immediately at the tenure of the secondary-operations employees. Respondent permitted repeated harassment of the secondary-operations employees by the Holicki brothers; the Holickis premised their tormenting of the secondary-operations employees on those employees' prounion sympathies, as Respondent knew. Most importantly, the ultimate threat toward the secondary-operations employees was by Jones, the owner, who told Charles Warren

> that he knew that the women was the biggest part of this problem that we had had, the reason why the Union was trying to get in there and that he would take care of them too.

Additional evidence of unlawful motivation is found in false defenses that Respondent asserted before trial. By letter dated August 6, counsel told the Union that the move of the secondary operations was ''to provide 'just in time' delivery.'' On direct examination, however, Sanders was asked, and he testified:

> Q. What significance did just in time have with respect to the decision to move to Kentucky?
> A. None.

Sanders was given another chance, specifically in regard to the Matrix portion of the secondary operations:

> JUDGE EVANS: Okay, but the movement of the Matrix machines themselves didn't do anything to satisfy just in time demands of actual or potential customers—
> THE WITNESS: No.

Therefore, the reason given to the Union was false. Additionally, the August 6 notice that Sanders read to the employees gave two reasons for the move, service of Respondent's ''large customer base'' in the South and to ''allow for expansion.'' The theory of Respondent's case at trial was that the move was to develop a customer base in the South; the ''large customer base'' did not exist before the move. The ''expansion'' reason was not given at trial, and there is no evidence that Respondent used the room provided by removal of the secondary operations to Kentucky to expand its core operations in Michigan. Therefore, the reasons that were given to the employees were false.

In view of the proof that Jones threatened to ''take care'' of the women of the secondary operations because of their protected activities, in view of the proof of the harassment of the secondary-operations employees that was condoned by Respondent's supervisors because of those employees' protected activities, in view of the proof of the false and shifting nature of the defenses for the layoffs that were asserted before trial, and in view of the proof of all of the other coercive conduct by Respondent's supervisors that is contained in this record, I conclude that the General Counsel has presented a prima facie case that the August 6 closing of the secondary operations, and the layoffs of the employees who remained in that department by that date, violated Section 8(a)(3).

(2) The defense asserted at trial

The reason given at trial for the move of the secondary operations was that Respondent wished to create a ''presence'' which would attract customers in the South. As Sanders put it: ''[T]he problem was the buyers in those locations wanted to make purchases from local people.''

This conclusion was not supported by independent market research, or by the testimony of some southern purchasing agents. In addition to the self-serving, uncorroborated, testi-

[25] Actually, ''give a shit.''

mony of Jones and Sanders, Respondent offered only post-hoc, letters from customers attesting to a preference for local suppliers; aside from the letters being grossest hearsay about those customers' preferences, they contain no commitment to purchase anything. At minimum, the letters are not probative evidence of any particular disposition by southerners to make purchases regionally.

There is no evidence that regional chauvinism, rather than hard economics, affects the business decisions of southerners, any more than regional chauvinism affects the business decisions of nonsoutherners. Specifically, there is no probative evidence that southern buyers prefer southern suppliers, and, except for lower shipping costs, which purchasers pay in the industry, there is no practical reason why they should. (But lower shipping costs to the purchasers was never mentioned as part of the defense, most probably because the proposition would immediately be met with the observation that shipping costs to Ford and Respondent's other northern customers were increased at the same time, unless Respondent absorbed those costs, which it did.)

Even if some southerners prefer to buy from those in the same ''neck of the woods,'' as Sanders phrased it, this would not explain the move of the Matrix operations, the production of which was bound only for Ford in Dearborn, Michigan.[26] I do not believe that Respondent ever believed that, although Southerner purchasing agents were not going to buy the Matrix production, its move to the South would be so warmly greeted that southerners' orders for *other* production would increase.

At one part of his testimony Sanders characterized the move of the Matrix operation as an ''afterthought.'' At another point in his testimony, Sanders testified that there were three specific reasons for moving the Matrix operations. The inconsistency is an indicator of pretext, but I shall examine the reasons, nevertheless. The reasons offered for moving the Matrix operations were: (1) there was a difficulty in obtaining personnel in Michigan; (2) Perkins wanted to move to the South; and (3) Ford was going to phase out its needs for the Matrix production. The enumerated ''reasons'' are not supported by evidence, or they are obvious pretexts, because: (1) the jobs were unskilled and the chance of filling them (if one tried) are at least as good in unemployment-riddled Michigan; (2) the ''Perkins'' reason is circular; Perkins' desires to move south would not have been entertained if Respondent were not moving secondary operations in the first place; moreover, the desires of a such a low-level supervisor would hardly be a significant consideration when weighed against the substantial expenditures involved in the move; and, (3) there is no corroboration for the proposition that Ford is going to stop using the brass parts that require Matrix treatment; but, even if Ford does intend to discontinue buying the Matrix production, Sanders acknowledged that the rest of the secondary operations could have been moved without moving the Matrix operation, and the move of an operation that is about to be discontinued makes objective sense under no standard suggested by Respondent.

Even by time of trial, Respondent could not ship any part of the secondary operations' production to Ford, or anyone else, from Kentucky. It lacked bar-code facilities, and, even if Respondent did have those facilities, Ford, Respondent's principal customer, would not accept shipments from Kentucky, directly or indirectly.[27] Respondent did not wait until the bar-code facilities were developed, and it did not wait for a Q-1 approval of its Kentucky plant. Instead, as soon as it saw that another election was going to be held, Respondent moved the secondary operations. In so doing, Respondent subjected itself to the shipping costs that Ford (and Respondent's other northern customers) otherwise would have been charged under industry practice. This procedure was not reflective of a business decision arrived at solely by economic motivation.

I further reject Respondent's contention that it was before the petition was filed that it made the decision to transfer the secondary operations to Kentucky. Jones testified that ''We actually made up our mind about what we were going to do probably around August of 1991.''

As late as October 4, 1991, however, Respondent wrote that it would have to have tax abatements and other concessions before it would establish a business in Kentucky. Sanders avoided placing a date on a final decision in his direct examination, but he made clear that the ''analysis'' of the process continued at least until, and even after, receipt of the January 16 informal accounting statement upon which Respondent relies. Then, ignoring the fact that January 16 is mid-month, and not ''early,'' Sanders also testified that a decision to move the secondary operations was made ''very early January,'' 1992. Sanders qualified even this testimony by stating that the decision was made ''with reservations.'' A final decision ''with reservations'' is not a final decision.[28]

(3) Conclusions on layoffs

On its face, Respondent's ''presence in the South'' defense is one of those subjective, self-serving, tell-them-anything, types of defenses to which the following statement by the Board, perfectly applies:

> The Board is not required to accept self-serving declarations of motive. *Shattuck Denn Mining Corp*., 151 NLRB 1329 (1965), enfd. 362 F.2d 466 (9th Cir. 1966).

Special Mine Services, 308 NLRB 711 (1992). When a litigant advances such a defense, it assumes the risk that its trier of fact will not accept at face value, and I do not.

Respondent at most has shown that, before notice of the organizational attempt, it contemplated establishing some business in the South. There is, however, no evidence, other than the bare statements of Jones and Sanders and the entirely suspicious (twice-dated) January 16 informal accounting statement, that Respondent contemplated discontinuing any part of the Michigan operations before it received notice of the union activities. Even if it had made a firm determina-

[26] Sanders testified that Ford has other plants; but Respondent adduced no evidence that any part of the Matrix production went anywhere but Dearborn. It is probably not by accident that Respondent's Michigan plant is located in a community contiguous to Dearborn.

[27] Again, Respondent could not sell its Kentucky production for subassembly to other Ford suppliers.

[28] Perkins and Ferguson testified that they had learned of a decision to move operations to Kentucky in 1991. Even according to Sanders, a final decision was not made until ''very early January'' of 1992. Perkins and Ferguson had been misled, or they were lying.

tion to move other parts of the secondary operations, it assuredly did not intend to move the Matrix operations until faced with an immanent rerun of the March 25 election.[29]

But no matter what the reason, ''presence in the South'' or otherwise, there is no probative evidence that Respondent made a final decision to move the secondary operations until it signed a lease with Strong. That it did on June 4, during the week following the hearing officers' May 28 recommendation that the March 25 election be set aside.[30] The secondary operations employees were a solid core of union support, as Jones acknowledged to Charles Warren. Such attempted disenfranchisement of an identifiable group of prounion, probably ''Yes''-voting, employees by discharging them has been see by the Board many times before.[31] It is always held to be violative, as I recommend that it be held here.

In summary, Respondent has not come forward with evidence to rebut the General Counsel's very strong prima facie case; the evidence that can be said to exist is purely pretextual. Accordingly, I conclude that, by the transfer of the secondary operations machines from its plant in Taylor, Michigan, to another facility in Barbourville, Kentucky, and by the attendant permanent layoffs of Vernadette Bader, Ruth Cecil, Josephine Mallia, Floria Russell, Rosemary Smith, and Bonnie Warren, Respondent violated Section 8(a)(3) of the Act.

3. Alleged conduct in violation of Section 8(a)(5)

The complaint alleges that the Union had secured a majority status by January 26, and the complaint alleges that since that date the Union has been the collective-bargaining representative of the production and maintenance employees. The complaint further alleges that: (1) the decision to move the secondary operations to Kentucky, and the effects of the August 6 move, were mandatory subjects of bargaining; and (2) that Respondent refused to bargain on those topics in violation of Section 8(a)(5).

A request for bargaining by the Union, is a *sine qua non* for a finding of an 8(a)(5) violation. *Trading Port*, 219 NLRB 298 (1975). There is, however, no evidence of a pre-August 6 request for recognition by the Union. The Union did request recognition by letter of December 3, and Respondent refused that recognition by a letter of December 8. Assuming a finding that the Union established its majority status, this exchange is a proper predicate for a finding of a violation of Section 8(a)(5) that began on December 8; however, that belated demand will not support a finding of a violation before December 8.

I find below that the Union has, in fact, represented a majority of the employees since January 26; accordingly, I conclude that Respondent violated Section 8(a)(5) beginning December 8. I do not, however, conclude that there was a violation of Section 8(a)(5) before that date, and I shall recommend dismissal of the allegation to that extent. (Ultimately, this will make no practical difference because, below, I conclude that a bargaining order, effective January 27 forward, is required as a matter of remedy for the other violations found herein, including specifically the August 6 transfer of the secondary operations and the terminations of the six employees named above.)

REMEDY

Bargaining Order

In *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969), the Supreme Court approved bargaining-order remedies for ''outrageous'' and ''pervasive'' unfair labor practices, even without a showing that the union involved ever possessed evidence that it was the majority representative of the unit of employees who have been affected by such unfair labor practices. At 614–615, above, the Court also approved the use of the bargaining order remedies in a second category of situations that it described as:

> less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election process. The Board's authority to issue such an order on a lesser showing of employer misconduct is appropriate, we should reemphasize, where there is also a showing that at one point the union had a majority; in such a case, of course, effectuating ascertainable employee free choice becomes as important a goal as deterring employer misbehavior. In fashioning a remedy in the exercise of its discretion, then, the Board can properly take into consideration the extensiveness of an employer's unfair labor practices in terms of their past effect on election conditions and the likelihood of their recurrence in the future. If the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight, and that employee sentiment once expressed through [authorization] cards would, on balance, be better protected by a bargaining order, then such an order should issue.

General Counsel contends that this case falls in this second category of cases that is described by the Court. In considering this contention, the first issue is whether the Union established, at any point, a majority status. If so, the second issue is whether a bargaining order is appropriate under the standards announced by the Court.

A. *The Union's Majority Status*

Employees Elmer Ferrell and Kenneth Cobb met with representatives of the Union in early January to discuss the prospect of organizing the unit employees. After collecting some employee names and addresses, IAM Grand Lodge Representative Kenneth G. Walsh and several other union representatives met with some employees to plan an organizational effort. On Friday and Saturday, January 24 and 25, the union representatives visited the homes of some employees, and they met other employees elsewhere in the Taylor,

[29] Respondent's October 4, 1991, letter addressed to Strong could be read to mean that Respondent may have, at one point, contemplated moving the entire business to the South. If so, any such plans were abandoned before the union activity began, probably because, as Sanders testified, skilled machinists that are required by the core operations are not available outside urban areas such as Detroit.

[30] Even then, according to Sanders, Respondent did not make a ''final decision'' to move the Matrix operations; that decision was not made until July 1992.

[31] See, for example, *Comcast Cablevision of Philadelphia, L. P*., 313 NLRB 220 (1993).

Michigan, area. As they visited the employees, the union representatives presented to them forms which were printed on standard, 8-1/2-by-11 inch paper. Printed at the top[32] of each page was:

Yes, we want the IAM[33]

> We believe that only through collective bargaining can we have a voice in our work place, achieve fair treatment for all, establish seniority, job security and better benefits, wages and working conditions. Therefore, this will authorize the International Association of Machinists and Aerospace Workers AFL–CIO to represent me in collective bargaining with my employer. This will also authorize said union to use my name for the purpose of organizing _____ [handwritten in this blank was ''Taylor Machine Products, Inc.''] as well as in the signing of leaflets.

Beneath this heading, which I shall refer to as the ''authorization language,'' were 10 blocks. Each block had lines designated for the date and the employee's printed name, address, department, shift, telephone number, classification, hourly rate of pay, and signature.

According to the testimony of Walsh, and other representatives who assisted him, when employee signatures were secured on the authorization petitions, the petitions were returned to Walsh. Walsh left the petitions that he used to solicit signatures intact; however, he cut the signature blocks from the petitions that were circulated by other union representatives, pasted the blocks to the authorization petition that he circulated, and photocopied the result. In this manner, Walsh testified, several union representatives were in possession of authorization petitions bearing several employee signatures, or signature photocopies, to show to additional prospective signatory employees; that is, this ''cut and paste'' procedure was an organizing technique.

The parties stipulated that, during the payroll period ending January 30, Respondent employed 58 employees in its production and maintenance unit. On January 26 the Union conducted a meeting of about 40 unit employees; at that meeting additional employee signatures were secured on copies of the authorization petitions that bore the quoted authorization language; some of the blocks bearing signatures that were secured at that meeting were also cut and pasted onto other copies of other petitions.

At trial, the General Counsel offered into evidence 39 signatures in signature blocks as described above. Some of the signature blocks are on authorization petitions that have never been cut; other signature blocks have been cut from other documents, and by time of trial, those blocks had been pasted on uncut authorization petitions. The General Counsel contends that: (1) these latter signature blocks were cut from other authorization petitions that the Union used during the organizational attempt; (2) employee signatures in those signature blocks were secured by the end of the January 26 meeting; and (3) at the time each of the (now cut and pasted) signature block was signed, they were on authorization petitions bearing the same authorization language that is quoted above. The issue before the Board is which, if any, of the signatures, including those in the cut and pasted signature blocks, may be considered as evidence that, by January 26, a majority of Respondent's 58 production and maintenance employees had selected the Union as their collective-bargaining representative.

Twenty-one employees identified their signatures in blocks on authorization petitions that had not been mutilated: David Carr, Ronald Calandra, Valencia Calandra, Jonathan DeWitt, Wilford Shepherd, Kenneth Cobb, Vance Cobb, Rick Engle, Jack Ferguson, James Prine, Bonnie Warren, Charles Warren, Melissa Hawthorne, Vernadette Bader, Flora Russell, George Hamilton, Elmer Ferrell, James A. McGowan, Betty Ferrell, Bobby Lezotte, and Kenneth Watson.

Three other signatures on nonmutilated authorization petitions were identified, not by the employees, but by union representatives. Union Representative John McDonald credibly testified that he saw employee Michael Mowry sign a nonmutilated authorization petition that was received in evidence. Union Representative Walsh credibly testified that he saw employee John Morgan sign a nonmutilated authorization petition that was received in evidence. Union Representative Richard Cummings credibly testified that he saw employee Shenan Lockhard sign a nonmutilated authorization petition that was received in evidence.

Therefore, there were 24 employee signatures that were identified as having been entered on or before January 26 on pages bearing, above the spaces for those signatures, the quoted authorization language, and those signatures were in their original state on the petitions when offered into evidence. In view of the testimony of the employees who signed the authorization petitions, or the union representatives who solicited the signatures, that the quoted, unambiguous, authorization language was on the petitions at the times of the signings, and there being no evidence that any of the signers were told that, despite the authorization language, the cards were only for another purpose (like an election), I find and conclude that these 24 signatures are valid as evidence of designations of the Union as the employees' collective-bargaining representative. *Keystone Pretzel Bakery*, 242 NLRB 492 (1979).

Unusual evidentiary issues are involved in the General Counsel's contention that, as further evidence of union support, the Board should count 15 additional employee signatures which appear in signature blocks that are identical to those in which the 24 ''unpasted'' signatures appear, even though those 15 signatures appear in blocks that had been cut from some authorization petitions and then pasted on other authorization petitions (for photocopying, as described by Walsh). Those 15 signatures are purported signatures of the following employees: Rick Allen, Josephine Mallia, Peter Mallia, Rosemary Smith, Jim R. Guerrero, Ruth Cecil, Gene Wilson, John D. Straub II, Rachael Edwards, Martha Triplett, David A. Cyr, Maudine Green, James Smith, Brian Howard, and Brian E. Morey.

Of these 15 employees, 13 credibly testified, without qualification, that, on or before January 26, they signed petitions bearing the authorization language. They further identified their signatures in the signature blocks that had been pasted on petitions that were received in evidence. Those 13 employees are: Josephine Mallia, Peter Mallia, Rosemary Smith, James Smith, Guerrero, Cecil, Wilson, Straub, Edwards,

[32] The pages were printed in landscape (as opposed to portrait) form.

[33] The bold facing is original.

Green, Morey, Triplett, and Howard. The testimony of each of these 13 employees was corroborated by union representatives who credibly testified that, on or before January 26, they witnessed the 13 employees' placing their signatures on authorization petitions. Those union representatives and the employees whose testimony they corroborated, were: Union Representative James Wilcox witnessed the signatures of Triplett, Rosemary Smith, Guerrero, Cecil, Wilson, and Green. Union Representative Richard W. Cummings witnessed the signatures of Josephine Mallia and Peter Mallia. Union Representative John McDonald witnessed the signatures of James Smith, Howard, Morey, Edwards and Straub.

There were two other cut-and-pasted signature blocks that were offered as evidence of union support; however, unqualified testimony that the signatures were originally affixed to petitions bearing the authorization language came only from the solicitors of the signatures: (1) Union Representative Cummings testified that he witnessed employee Rick Allen sign an authorization petition form, with the quoted authorization language on it, on or before January 26; however, Cummings' testimony was not completely corroborated by Allen. Allen acknowledged his signature on a pasted signature block in evidence, he acknowledged signing some ''petition,'' and he acknowledged that, before he affixed his signature at a union meeting, the union representatives had asked for his support; however, Allen disclaimed memory of the quoted authorization language being on the document that he completed and signed. I credit Cummings, and find that the authorization language was on the petition that Allen signed. (2) Union Representative Wilcox testified that he witnessed David Cyr's signing of a petition bearing the authorization language. Cyr was called by Respondent to testify on other matters, but I allowed the General Counsel to examine Cyr on the issue of the authenticity of the pasted signature block that purports to bear his signature. Cyr acknowledged that the pasted block was signed and filled out by him, but he testified that there was no language above the block that would indicate that he wanted the Union to represent him. Cyr first testified that there was no language at all above the block when a union representative presented some paper to him to sign at his home; then he testified that, when he filled out and signed something, the printing on the form indicated only that he would attend a union meeting. I do not believe that Cyr filled out any document calling for both his printed name and his signature with no language indicating purpose above it; nor do I believe he would supply such only for a meeting-attendance promise. Cyr's vacillation betrayed him; he was plainly there to help Respondent in any way he could. I credit the testimony of Wilcox.

The issue before the Board is whether the 15 employees whose signatures were ''cut and pasted'' had designated the Union as their collective-bargaining representative. The issue is not whether the General Counsel has presented evidence of designations in some particular form. Authorization cards in their pristine state are not required to establish that employees have designated a union as their collective-bargaining representative. In fact, in at least one case, the Board has found that, even where no cards are produced, and there is no explanation for the nonproduction, parol testimony proves that the designations occurred. In *Howard-Cooper Corp*., 117 NLRB 287, enfd. 259 F.2d 588 (9th Cir. 1958), a case involving a 12-employee unit, no union authorization cards were produced by the General Counsel and the Board noted that there was ''no showing that they could not have been produced through the exercise of due diligence.'' Nevertheless, the Board found that a majority had been established relying on the testimony of six employees that they had signed union authorization cards and the testimony of one of those six that a seventh, determinative, employee had signed an additional card. Additionally, in *Hedstrom Co*., 223 NLRB 1409 (1976), where employee Mock and employee Hammer testified that Mock had solicited a union authorization card that Hammer had signed, the Board held:

> Although the best evidence of Hammer's designation of the Union would be his signed card, it is settled that the testimony of an employee is itself probative of a union's majority status in circumstances where the card has been misplaced. [Footnote citing *Aero Corp*., 149 NLRB 1283, 1291 (1964).] Based on the mutually corroborative testimony of Hammer and Mock, we find that Hammer signed a union card. Consequently, we shall count Hammer among the employees who designated the Union as their collective-bargaining representative.

See also *J. P. Stevens*, 204 NLRB 407, 426 (1979).

In this case there is credible testimony, all corroborated except in the cases of Allen and Cyr, that all 39 signatures offered in evidence were once affixed to unambiguous designations of the Union as the employees' collective-bargaining representative. In addition to that testimony, the record bears at least part of the petitions on which the designations were made, the signature blocks. Respondent nevertheless contends that, because the signature blocks have been cut from originals, they should not be considered to be probative evidence of designations. If accepted, this position would mean that a union is in *poorer* legal position if *part* of an otherwise valid designation survives being lost. That would make no sense. There is no logical distinction between the above cases of lost, or simply not-produced, authorization cards, and this case in which only part of the authorization petitions have been lost.

I find and conclude that all 39 signatures offered in evidence are valid as evidence of designations of a collective-bargaining representative; and I find and conclude that, by January 26, the Union had been designated as the majority collective-bargaining representative of the unit employees.

B. *Appropriateness of a Remedial Bargaining Order*

On the morning following the Union's organizational meeting of January 26, Respondent began its onslaught of unfair labor practices. Plant Manager Cassiopia, third in hierarchy to Jones and Sanders, began calling employees into his office to interrogate and threaten them; the threats were clear, and they were the extreme: Jones would close the plant.

An employer is free to communicate with its employees in general terms about unions as long as the communications do not threaten or promise benefits. Among the panoply of threats that antiunion employers can make, possibly the most destructive of employee rights is the threat of plant closure. This is why the Board stated in *Somerset Welding & Steel*, 304 NLRB 32 (1991):

> We have emphasized, with court approval, that threats of plant closure and discharge not only are ''hallmark'' violations but are ''among the most flagrant of unfair labor practices.'' *Action Auto Stores*, 298 NLRB 875 (1990) (citing *Indiana Cal-Pro, Inc. v. NLRB*, 863 F.2d 1292, 1301–1302 (6th Cir. 1988), 287 NLRB 796 (1987)).

In *Somerset* a remedial order was issued because of the threats of plant closure (and a single instance of a wage-increase denial); there were no point-making discharges, as found herein.

The fact that the plant-closure threats, other threats, and interrogations were initiated, immediately, by the high-ranking Cassiopia enlarges their gravity. As the Board stated in *Garney Morris, Inc*., 313 NLRB 101 (1993): ''The participation of a high-level manager in unlawful conduct exacerbates the natural fear of employees that they would lose employment if they persisted in their union activities.''

One step up the ladder was Sanders. Any threats that he made would assuredly have an enduring, negative impact on any employee who considers union activities in the future. And Sanders uttered the most brutal threats of them all: he twice told Wilson that, with the employee's heart condition he should not be risking union activities.

Perkins and Bertram echoed the threats, beginning immediately after the January 26 organizational meeting. Then Jones, himself, the ultimate repository of authority over the employees' jobs, confirmed the intended impressions by telling Charles Warren that: ''[H]e knew that the women was the biggest part of this problem that we had had, the reason why the Union was trying to get in there and that he would take care of them too.''

The above-quoted language of *Garney Morris* perfectly applies to this threat by Owner Jones.[34]

Concurrently with the succession of threats and interrogations that began on January 27, Respondent permitted harassment of those most ardent, but most vulnerable, of the union supporters, the women who worked in the secondary operations. Of the 58 unit employees, there had been 31 ''yes'' votes in the March 25 election. One way to disenfranchise a significant portion of those ''yes'' votes was to terminate a significant number of the employees who most probably cast them. This Respondent did by executing a lease in Kentucky within a week of the hearing officer's report recommending a rerun of the election; then, after transferring others out of the secondary operations, it terminated the solidly prounion remainder: Vernadette Bader, Ruth Cecil, Josephine Mallia, Floria Russell, Rosemary Smith, and Bonnie Warren.

Without a bargaining order, the effects of these violative discharges, and the effects of the other unfair labor practices found herein, will linger with the current employees and any subsequently hired employees who come to learn of them. Hereafter, a fair rerun is most unlikely. Therefore, a remedial bargaining order is required, as I find and conclude.

That is, I conclude that, in light of the above unfair labor practices found herein, the authorization petitions executed by a majority of the employees in the unit are a more accurate measure of the free and uncoerced employee desires for representation than a second election would be. Accordingly, I conclude that the Respondent's bargaining obligation arose as of January 27, 1992, the date it embarked, through the threats and interrogations of that date, on its course of conduct designed to destroy the Union's majority status that had been established by that date.[35] I shall therefore order Respondent presently to bargain with the Union, upon request, concerning all future terms and conditions of employment of the unit employees and all changes in the terms and conditions of employment of the unit employees that have been made since January 27, 1992; this includes, if requested by the Union, bargaining over the manner and means of compliance with the restoration order issued below.

Restoration Order

The complaint seeks restoration of the secondary operations to Respondent's Michigan facility. Respondent resists on the grounds that such order would be unduly burdensome and that its decision to relocate the secondary operations in Kentucky was protected by the Board's rationale in *Dubuque Packing*, 303 NLRB 386 (1991).

In *Dubuque Packing* the Board outlined possible defenses in cases where a labor organization has been recognized, and a collective-bargaining relationship has been established, but an employer nevertheless relocates its operations without bargaining. Here, there was no such recognition, or relationship. The Respondent moved its operation in order to defeat an organizational attempt and to avoid possibly having to fulfill a legal obligation to recognize the Union. *Dubuque Packing* was not issued to license an attempt to destroy a union's majority; and it most assuredly was not issued to license the callous termination of employees which Respondent conducted herein. Finally, the defenses outlined in *Dubuque Packing* require real evidence, not unsupported protestations that the partial plant removal had nothing to do with labor costs.[36] Sanders' unsupported testimony that labor costs were not a consideration in the decision to move the secondary operations to Kentucky (just a happy circumstance that made the 800-mile round-trip shuttling operation economical) is not evidence.

Respondent's ''unduly burdensome'' argument also is not supported by any evidence. In *B & P Trucking*, 279 NLRB 693 (1986), the administrative law judge conducted an analysis of what information there was in the record that might relate to a claim of undue burden, and he found that the defense had not been made out. The Board did not review the analysis; rather it observed, at footnote 3:

> In adopting the judge's remedial order requiring Respondent to reestablish the business [of a joint employer], we note that Respondent failed to submit any evidence showing that reestablishment would be unduly burdensome.

To be distinguished are cases in which a respondent substantiates such an ''unduly burdensome'' claim with documentation on the point.[37] Here, the complaint plainly stated that

[34] For the last time: according to this record, other than the antiunion Kiracofe, the only unit employees who were women were the secondary-operations employees.

[35] *Peaker Run Coal Co*., 228 NLRB 93, 97 (1977).

[36] *Owens-Brockway Plastic Products*, 311 NLRB 519 (1993).

[37] See, for example, *Hood Industries*, 273 NLRB 1587 (1985).

the restoration order was being sought, but Respondent adduced no evidence to meet the demand. Therefore, on the record as it stands, there is no reason not to grant the requested relief.

Accordingly, I shall recommend that Respondent be required to resume the secondary operations at its Taylor, Michigan plant and reestablish the status quo ante.

Other Necessary Remedies

The Respondent, having discriminatorily discharged employees James Howells, Vernadette Bader, Ruth Cecil, Josephine Mallia, Floria Russell, Rosemary Smith, and Bonnie Warren, must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest to be computed as specified in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In view of the number and pervasive nature of the unfair labor practices found herein, I shall include a broad cease-and-desist order, requiring Respondent to refrain from, in any other manner, violating the rights of its employees under the Act. See *Hickmott Foods*, 242 NLRB 1357 (1979). Finally, Respondent shall be required to post a notice that assures the employees that it will respect their rights under the Act,

CONCLUSIONS OF LAW

1. By the following acts and conduct, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act:

(a) Threatening employees with plant closure, harsh working conditions, discharge and other discipline, because they have become or remained members of, or because they are in sympathy with, or because they have given assistance or support to, the Union.

(b) Interrogating employees about their union membership, activities, or desires, or the union membership, activities, or desires of their fellow employees.

(c) Permitting some employees to harass other employees because those other employees have become or remained members of the Union or because those other employees are in sympathy with the Union or have given aid or support to it.

(d) Maintaining in effect a disciplinary rule that prohibits distribution of literature in nonworking areas of Respondent's premises.

2. By the following acts and conduct, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act:

(a) Denying an unpaid leave of absence to employee Bonnie Warren because she had become or remained a member of the Union or given assistance or support to it, or because other employees had engaged in such activities.

(b) Discharging or laying off employees James M. Howells, Vernadette Bader, Ruth Cecil, Josephine Mallia, Floria Russell, Rosemary Smith, and Bonnie Warren, because they had become or remained members of the Union or given assistance or support to it, or because other employees had engaged in such activities.

3. By failing and refusing, since December 8, 1992, to recognize and bargain with the Union as the collective-bargaining representative of the employees in the following unit of employees, which unit is appropriate for bargaining under Section 9(a) of the Act, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act:

> All full-time and regular part-time production and maintenance employees employed by Respondent at its facility located at 21300 Eureka Road, Taylor, Michigan; but excluding office clerical employees, professional employees, and guards and supervisors as defined in the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[38]

ORDER

The Respondent, Taylor Machine Products, Inc., Taylor, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with plant closure, harsh working conditions, discharge or other discipline, because they have become or remained members of, or because they are in sympathy with, or because they have given assistance or support to the Union.

(b) Interrogating employees about their union membership, activities, or desires, or the union membership, activities, or desires of their fellow employees.

(c) Permitting some employees to harass other employees because those other employees have become or remained members of the Union or because those other employees are in sympathy with the Union or have given aid or support to it.

(d) Maintaining in effect any disciplinary rule that prohibits distribution of literature in nonworking areas of Respondent's premises.

(e) Denying an unpaid leave of absence to Bonnie Warren or any other employees because those employees have become or remained members of the Union or given assistance or support to it, or because other employees have engaged in such activities.

(f) Discharging or laying off employees, or otherwise discriminating against employees, in order to discourage membership in, or activities in support of, the Union.

(g) Failing and refusing to recognize and bargain with the Union as the collective-bargaining representative of the employees in the above-described bargaining unit.

(h) In other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reestablish its secondary operations in Taylor, Michigan, and restore the work formerly performed there by the unit employees including Vernadette Bader, Ruth Cecil, Jose-

[38] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

phine Mallia, Floria Russell, Rosemary Smith, and Bonnie Warren.

(b) Offer to James M. Howells, Vernadette Bader, Ruth Cecil, Josephine Mallia, Floria Russell, Rosemary Smith, and Bonnie Warren, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges that they previously enjoyed, and make them whole for any loss of earnings or other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this decision.

(c) Remove from its files any reference to the unlawful discharges or layoffs of James M. Howells, Vernadette Bader, Ruth Cecil, Josephine Mallia, Floria Russell, Rosemary Smith, and Bonnie Warren, and notify them in writing that this has been done and that their discharges or layoffs will not be used against them in any way.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) On request, bargain collectively and in good faith concerning rates of pay, hours of employment, and other terms and conditions of employment with the Union as the exclusive collective-bargaining representative of its employees in the above-described unit, and embody in a signed agreement any understanding reached.

(f) Post at its Taylor, Michigan facility copies of the attached notice marked ''Appendix.''[39] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[39] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''